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Study: Courts failing poor youths Inadequate counsel seen as Indiana's key flaw

By Tim Evans

Poor children in Indiana's juvenile courts don't get adequate legal representation and are more likely to be incarcerated than wealthier peers, according to a report that calls the state's public defender system "seriously flawed."

Taxpayers pick up the bill: \$40,000 to \$100,000 annually per incarcerated child.

"If this were happening in any other country, Amnesty International and our government would be there condemning it," said Larry A. Landis, executive director of the Indiana Public Defender Council, "but we do it every day."

The report, to be released today, said:

Nearly half of the 26,000 youths in juvenile cases are not represented by counsel, with the rate as high as 80 percent in some counties.

Courts fail to adequately explain the consequences of not having an attorney.

The appointment of public defenders occurs too late in the process to give defenders time to represent their clients adequately.

Many public defenders have excessive caseloads and inadequate resources to provide "zealous advocacy."

Schools and child welfare agencies clog courts with children better served through other community programs.

"The most disturbing finding . . . is that it has become a tolerated, if not accepted, practice . . . that youth go unrepresented by counsel, even during some of the most critical proceedings that affect their liberty interests," the authors wrote in "Indiana -- An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings."

The report quotes an unidentified magistrate who oversees juvenile cases: "If I were facing charges, I would hate to think I was meeting the attorney for the first time on the day of the trial," she told researchers.

The National Juvenile Defender Center and the Children's Law Center conducted the state's first comprehensive review in conjunction with the Indiana Juvenile Justice Task Force, which commissioned the study.

Findings are based on visits to courts and interviews with juveniles, parents, judges and attorneys in 11 counties that constitute a representative sample of the state, said Bill Glick, executive director of the Juvenile Justice Task Force.

The report does not break out data for individual counties or compare Indiana with other states, but it includes 11 recommendations that call on the legislature, county officials, judges and attorneys to improve the quality of services to indigent youths. The recommendations include making public defenders independent of the court system and prohibiting juveniles from waiving their right to counsel without consulting an attorney.

Elizabeth Kehoe, staff attorney for the juvenile defender center and one of the report's authors, said Indiana is not unique.

"Money and resources are a problem everywhere," she said.

Glick said the report confirms what many involved in the juvenile justice system already knew or suspected.

The reasons some youths did not obtain representation ranged from a conscious choice by the child or parents to pressure from prosecutors, probation officers and judges.

Glick said the money spent to incarcerate juveniles could be put to better use.

"For \$40,000, you could hire another half-time public defender or send a kid to Harvard," he said. "If public defenders had the time and resources, and got involved in cases earlier, we could send more kids to intensive community-based services, get better outcomes and save money, too."

Counties pay for public defender services, but the state will reimburse up to 40 percent of the cost if the county has an independent board to supervise the programs.

In 39 counties without the independent boards, the defender system is controlled by a judge, which the report called a serious conflict of interest.

Boone Circuit Judge Steve David, president of the Indiana Council of Juvenile and Family Court Judges, said Indiana must do better to protect the rights of children.

"There is no quick fix to these problems," he said. "Certainly more money is needed, but money itself . . . is not necessarily going to solve some of the problems."

Landis, of the state public defender council, said problems cited in the report stem from the larger issue of inadequate funding for all public defender services in the state. He said Indiana ranks 48th in per capita funding for public defenders.

The problem has lingered in juvenile courts because they fly under the public radar and few cases are appealed, which Landis said is a critical component of ensuring high-quality representation. That is compounded because the law allows juvenile judges to act as disciplinarian parents rather than neutral referees.

"At this point, we don't need to point fingers or assess blame," Landis said. "What we need to do is acknowledge the problem, say 'shame on us' and figure out how to do better."

Glick said that is the task force's goal.

"We hope this report will stir some interest in the issue," he said, "and lead to some rules changes in courts and build support for funding to hire more attorneys and expand training and education."

INVESTIGATOR OBSERVATIONS

- One juvenile defender noted, "The judge speaks to youth only using \$10 words when the kids understand 25-cent words," leaving many youths without an understanding of the consequences of waiving these rights.
- One investigator explained: "I went into a conference room where a large-screen TV was playing a video advisement of rights. It was about 10-15 minutes long, and the judge was reading from a bench book in terms not particularly kid-friendly. Of the 20-plus people in the room, not a soul was watching the video, which was almost at an inaudible level. I stood right next to the television and could barely hear it."
- A magistrate in one county said she didn't think children need attorneys because she didn't think "the end result would be different if there was an attorney."
- An investigator observed a public defender sitting in a courtroom while child after child waived the right to an attorney. . . . The attorney indicated that accepting too many cases from juvenile court would place the public defender program in jeopardy of losing reimbursement funding, as it would exceed commission caseload standards.
- Investigators directly observed and were told of excellent defenders throughout the state who engaged in active motions practice, effectively took cases to trial and continued representation post-disposition.
- The investigator observed a defender who was nearly silent during the court proceedings but for failed attempts to joke with the judge. The defender even failed to speak with his client.

- Defender explained that, "The judge does not like to be proved wrong and will take it out on other clients, so I sacrifice one juvenile('s need for mental health services/expert) to protect others. If I get it for one child, the next won't get it."
- One chief public defender revealed to an investigator that he sees juvenile court as not practicing "real law," and that he views juvenile assignments as the worst because "you have to be in court a lot."
- One county judge believed schools were failing to produce appropriate Individualized Education Plans for special education youths so they would be able to expel more children and refer them to the justice system. A probation officer in another county suggested the teachers union is forcing the schools to refer more cases to the delinquency system and that many of these referred youths have special education needs.
- Investigators too frequently observed cases of youths in the child welfare system who were inappropriately involved in delinquency proceedings. In many of these cases, they noted outcomes that seemed overly harsh or unrealistic.

Source: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings

AMONG THE REPORT'S RECOMMENDATIONS

- State laws should prohibit children from waiving counsel or, at least, require children to consult with counsel before doing so.
- Juvenile courts should ensure that judges thoroughly inform and educate children about their rights, that no child goes unrepresented at any critical stage of proceedings and that indigent counsel be independent of the judiciary.
- Caseloads and resources at the county level should be manageable enough to allow defenders to properly investigate and prepare cases from arrest through appeal.
- Attorneys representing children in the juvenile justice system should have adequate physical resources, litigation support services and access to experts.

- Public defense and bar organizations should increase opportunities for juvenile defense attorneys to participate in meaningful and intensive training on relevant issues facing children and youths in the juvenile delinquency system.
- Public defense and bar organizations should create a statewide juvenile defender office to bring together resources and expertise from throughout the state, continue the process of evaluating the delivery of legal services to Indiana's children, and implement specific policies and programs as appropriate.