

THE OFFICE OF THE JUVENILE DEFENDER

HISTORY

The Office of the Juvenile Defender (OJD) developed out of a study issued in October 2003 that explored the quality of representation in juvenile delinquency court in North Carolina. As a result, a recommendation of the Indigent Defense Services (IDS) Juvenile Committee was the creation of the Juvenile Defender of North Carolina position. The office opened in January 2005.

OUR MISSION

- **Provide services and support to juvenile defense attorneys.** In conjunction with the UNC School of Government, OJD organizes and presents numerous statewide, regional, and local trainings including introductory, intermediate, and advanced topics; we also worked with the UNC School of Government to develop a practical manual for juvenile defense counsel. The Manual includes an overview of statutory law, practice suggestions, and model forms and motions. We also maintain a clearing house of juvenile delinquency related material. OJD assists legal counsel by providing information to individual questions or ongoing consultation, for cases pending in delinquency or adult trial court, or on appeal. Additionally, a Juvenile Defender listserv has been created to allow juvenile defense counsel to discuss case problems, systemic issues and other relevant topics quickly and efficiently.
- **Evaluate the current system of representation.** Since our inception, OJD has visited three quarters of NC counties to observe court, speak with court officials, and make recommendations to IDS as needed to improve the quality of juvenile defense representation. In an effort to strengthen juvenile defense representation, our office recommends, as needed, entering into contracts with local counsel to represent juveniles. Currently there are contracts in eighteen counties in the state. OJD has also taken the lead in developing policy related to qualification standards for practicing in juvenile delinquency court and performance guidelines for juvenile defense representation. OJD has also explored other dimensions of representation such as education rights and post-dispositional advocacy.
- **Elevate the stature of juvenile delinquency representation.** In an effort to bring attention to the need for quality defense counsel in delinquency proceedings, OJD regularly presents our initiatives to various justice groups and adds a defense counsel voice to several boards and committees. OJD also works to inspire aspiring attorneys to consider juvenile defense representation as a career by guest lecturing at several of the law schools and hosting legal interns and externs.
- **Work with juvenile justice advocates to promote positive change in the juvenile justice system.** OJD has partnered with numerous advocacy groups including but not limited to the NC Bar Association Juvenile Justice and Children's Rights Section, the Governor's Crime Commission, and Action for Children to address critical juvenile justice issues such as Disproportionate Minority Contact (DMC) and raising the age of jurisdiction in delinquency court.

CURRENT INITIATIVES

OJD will continue to pursue our mission through several new initiatives including working with the NC State Bar to develop a juvenile delinquency sub-specialization, continuing to explore representation of those juveniles committed to youth development centers, improving legal representation of special populations of youth, and researching issues related to juvenile appellate cases.

Office of the Juvenile Defender

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Suggested Reading

- **No Place for Kids: The Case for Reducing Juvenile Incarceration**
The Annie E. Casey Foundation, Baltimore, Maryland (2011)
<http://www.aecf.org/OurWork/JuvenileJustice/JuvenileJusticeReport.aspx>
- **Addressing Disproportionate Minority Contact (DMC) in Juvenile Delinquency Court**
Office of the Juvenile Defender [N.C.] (August 2011)
<http://www.ncids.org/Juvenile%20Defender/Guides/AddressingMinorityContact.pdf>
- **Representing Lesbian, Gay, Bisexual, Transgender, Queer, or Questioning (LGBTQ) Youth in Juvenile Court**
Office of the Juvenile Defender [N.C.] (April 2011)
http://www.ncids.org/Juvenile%20Defender/Guides/LGBTQ_Guide.pdf

Office of Indigent Defense Services
North Carolina Juvenile Defender

<http://www.ncids.org/Juvenile%20Defender/JuvDef%20HomePage.htm?c=Defender>

Efforts and Initiatives to Improve Legal Representation for Juveniles Committed to Youth Development Centers

Under current law, juveniles held in Youth Development Centers (“YDC”) are not afforded legal counsel. The Office of the Juvenile Defender (“OJD”) embarked on several projects in an effort to address this lack of representation.

Youth Development Center Projects

In 2008, OJD completed the first Youth Development Center Commitment Project (“2008 Project”). During the 2008 Project, OJD reviewed a sample of 147 files from juveniles committed in 2007 from 11 counties in 9 districts. The purpose of the review was to determine whether juveniles were being committed in error, *i.e.*, without legal basis and/or for a maximum term of commitment that was not legally supported, while also assessing the necessity of providing legal counsel to committed juveniles post-disposition to address such errors in the future. An “error” was defined as a mistake in the file that could possibly have had an impact on the legality of the commitment or the maximum term of commitment. Errors were reviewed and classified as follows: a “negligible error” was an error that did not directly affect the decision to commit the juvenile and, if corrected, would have had no impact on the release of the juvenile or the juvenile’s maximum term of commitment. An “actionable error” was an error that, if corrected, would result in the release of the juvenile or a reduction in the juvenile’s maximum term of commitment. A “potentially actionable error” was an error that could not be classified as actionable or negligible from the face of the file, and required further investigation. The key finding of the 2008 Project revealed that the actionable error rate fell between 16.4% and 43.8%. As a result of this study OJD focused its training efforts with attorneys on dispositional advocacy, working to ensure that defense counsel received copies of orders, as well as working with AOC to create and amend forms to reduce errors.

In 2009, OJD initiated a follow up review of 59 files from juveniles who were committed during 2009 from eight districts, (“2009 Project”). The purpose of the 2009 Project was to determine if the results would be comparable to the 2008 Project, as well as to continue assessing errors and the necessity of providing legal counsel to committed juveniles post-disposition. Errors were reviewed and classified as either “negligible” or “actionable.”

Errors found based on file reviews and investigations:

- ❖ 9 files (15.3%) revealed no error.
- ❖ 32 files (54.2%) had a negligible error.
- ❖ 18 files (30.5%) had at least one actionable error.
 - ◆ Of the 18 files with at least one actionable error, OJD contacted the respective trial attorneys to notify them of the identified errors in 14 of those cases.
 - ◆ Errors in 1 file (7%) were corrected by the court.
 - ◆ In 1 other file (7%), although the court agreed that there was in fact an error as identified by the Project, the court found that the argument had been waived when not raised at an earlier hearing.
 - ◆ In 2 other files (14%), the court’s jurisdiction ended before the error could be corrected.
 - ◆ In 1 file (7%), the attorney decided not to return the case to court for modification of the juvenile’s maximum term of commitment after considering the identified errors and the juvenile’s current legal situation.
 - ◆ In 9 files (64%), correction is pending.
- ❖ Some examples of actionable errors included: the legal basis for commitment was incorrect; there was no legal basis marked on the disposition order; the juvenile was committed for an incorrect maximum term; and there was no maximum term of commitment entered.
- ❖ Some examples of negligible errors included: there was missing information in the juvenile’s file; there was an incorrect determination of points assigned to prior adjudications; there was an incorrect determination of prior delinquency history level; there was an incorrect determination of disposition level options; and it was unclear whether probation was extended or a new probation was entered at disposition.

As a result of the findings of both projects, OJD plans to continue its voluntary review efforts through collaborative projects with interested law schools. OJD also plans to continue providing training to juvenile defense counsel to address problematic trends; to work with the Office of the Appellate Defender to assist appellate counsel in identifying errors for correction at the appellate level as well as on possible appellate process reform; to work with juvenile justice stakeholders to consider legislative reform to address statutes governing the commitment process in an effort to reduce the number of errors; and to work with juvenile justice stakeholders to institute post-disposition counsel for committed juveniles to address illegal commitments as well as unsafe or inhumane conditions. OJD believes that by implementing the above projects and initiatives, North Carolina can better provide the protections afforded to juveniles by the law.

In addition, OJD has worked on the development of and continuing technical support to the following projects to help provide legal services to committed and detained juveniles:

Incarcerated Youth Advocacy Project

The North Carolina Prisoner Legal Services, Inc.'s Incarcerated Youth Advocacy Project (IYAP) represents juveniles committed to Youth Development Centers. IYAP advocates for children whose sentences may have been wrongly imposed, and investigates and represents children on claims relating to conditions of their confinement, such as education, health care and sexual abuse. The Project also documents the ongoing need to provide youth access to the courts by gathering relevant information for policy makers. IYAP works with the Office of the Juvenile Defender and other stakeholders to ensure that incarcerated youth are treated fairly, safely, and humanely.

IYAP accepts cases based on referrals from attorneys and other advocates, as well as direct requests from the incarcerated children, their parents, guardians, or other individuals acting on behalf of the children incapable of requesting legal assistance. For more information please contact:

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Juvenile Reentry Action Project

The Juvenile Reentry Action Project (J-RAP) provides free civil legal services, primarily education advocacy, to North Carolina youth who are involved in the juvenile delinquency system and have been confined in a detention center, treatment facility, group home, or Youth Development Center (sometimes called "training school"). The goal of J-RAP's legal advocacy is to help make sure that when these youth are released and return home, they can go back to public school and increase their chances of earning a high school diploma. For more information or for client referrals, please contact:

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