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Juvenile Delinquency: The Case for Specialty Training

By Sue Burrell

Each year, more than 100,000 young people in California face juvenile court delinquency petitions alleging violations of the law - more than in any other state. Most are represented by an attorney - and for good reason. The potential consequences of juvenile court proceedings are serious and far-reaching. A young person found "unfit" by the juvenile court will be prosecuted in criminal court and held to adult criminal penalties, including imprisonment up to life without the possibility of parole. Those prosecuted in juvenile court may be held up to age 25. They may also suffer adult consequences including the reporting of their DNA and records to the California Dept. of Justice, sex offender registration, and use of juvenile adjudications as "strikes" for sentencing enhancement.

Juveniles adjudicated for less serious offenses may suffer incarceration, educational disruption, and stigma. Depending on the offense, they may find it difficult to get back into school, apply for financial aid, join the military, adjust immigration status, live in public housing, hold a driver's license, or successfully navigate employment interviews. The cloud of a juvenile adjudication may follow them for their entire lives.

Apart from the consequences of juvenile adjudications for the individual, there are societal issues at stake. Although the juvenile system is designed to rehabilitate, this does not always happen. Young people who go through the system with unaddressed mental health problems, substance abuse issues, family problems, or educational deficits are more likely to reoffend. Similarly, those who are dispatched to programs or facilities that are poorly matched to their needs are destined to fail and to penetrate further into the justice system. Those who are unnecessarily incarcerated experience negative peer influences; interference with critical stages of adolescent development; and an inability to engage in the very kinds of activities and relationships needed to build success in the community.

Those coming before the juvenile court are overwhelmingly youth of color - most often from poor or struggling families. Compared to the general youth population, they have much higher prevalence of developmental disabilities, mental illness, and histories of trauma and abuse. Many of them have not yet or are just reaching adolescence - one out of five is 14-years-old or younger.

The integrity of juvenile justice system depends on the ability of its component parts to skillfully and zealously play their role. If defense counsel lacks the skills to fully investigate, prepare, and litigate the case it is much more likely that an unjust result will be reached.

The required skill set for competent juvenile delinquency defense is considerably different and broader than that needed for adult criminal defense. Juvenile defense counsel need to know criminal law, but also must be aware of separate juvenile standards for fundamental issues such as competence to stand trial, confessions, and capacity to commit a crime. They must master the extensive body of California's Juvenile Court Law, with its own terminology, procedures, timelines and legal standards. Counsel must also advocate with knowledge of the different purpose of juvenile court proceedings - which requires that youth receive care, treatment and guidance in accordance with their individual needs, and that they be held accountable for their actions, but without retributive punishment. (California Welfare & Institutions Code Section 202.) They must have the skills to explain complex legal principles to their clients in an understandable way, and assert their clients' expressed wishes even when others would like to impose their own views of the child's "best interest." Competent representation requires counsel to be familiar with the kinds of services or programs that produce good rehabilitative results, and the providers available to provide those services. It requires counsel to engage families and assure that needed supports are in place to ensure success. In performing this work, juvenile defenders must understand and be able to apply the principles of adolescent development; education and special education law; and mental health law. In addition, in juvenile court, representation does not end at the time of "sentencing" (California Rules of Court, Rule 5.663.) Because the goal of the juvenile justice system is to actually address the factors that led to juvenile court involvement, counsel must monitor post-disposition progress in implementing the court's orders and take appropriate action if there are problems.

California has provided for the appointment of counsel in delinquency cases since before *In re Gault* (1967) 387 U.S. 1, recognized it as a constitutional right. But the right to counsel means very little if lawyers are dispatched to

courtrooms without the proper training and knowledge to competently represent their young clients. California's 2008 *Juvenile Delinquency Court Assessment* (Administrative Office of the Courts, Center for Families, Children, and the Courts), observed that "...having experienced, well-trained attorneys is critical to ensure the fair processing of delinquency cases and quality representation for youth who enter the delinquency system." Training is only one of several broader issues affecting the quality of representation - including professional status, indigent defense resources, and juvenile system accountability - but it is a great place to start.

Training is necessarily decentralized because California juvenile delinquency representation is county-based, and a variety of structures are used. Approximately two-thirds of juveniles are represented by public defenders, and the remainder are represented by a combination of panel attorneys, contract office attorneys, or privately retained counsel.

How well prepared are these counsel to perform the highly skilled, responsible role required to assure competent representation for young people coming before the court? The Pacific Juvenile Defender Center undertook a training survey of juvenile defense counsel at two statewide conferences in 2009. More than 200 attorneys responded, representing 38 of the 58 counties and several indigent appellate defense offices. Of those responding, 11 percent had been practicing for two years or fewer; 24 percent for three to ten years; and 65 percent had been engaged in juvenile delinquency practice for more than 10 years. While this was a somewhat self-selecting group because these attorneys were at training conferences, their responses provide a window into juvenile defender training and resources across the state.

For 15 percent, the conference at which they were surveyed was their first training aimed directly at juvenile defense counsel; and 35 percent had attended three or fewer trainings aimed directly at juvenile defense counsel. Those percentages were higher for attorneys in practice for two years or fewer.

More significantly, 45 percent of those responding reported receiving no training when they started representing young people in delinquency proceedings. Of those, there was an even split between public defender and non-defender responses. Of those who received some training, 43 percent received one day or less.

Among those surveyed, 50 percent work in offices that do not provide ongoing training specific to juvenile defense practice, and the percentage is much higher for those who are not in public defender offices. In offices that provide it, training frequency ranges fairly evenly between months, quarterly, twice yearly and annually. Most offices providing juvenile training require attendance, but 21 percent do not, and 3 percent of respondents did not know if they are required to attend training.

Of those responding, 71 percent are not paid or reimbursed for attending training, and 88 percent of non-public defender counsel do not receive payment for attending training. Of those whose offices provide payment, the arrangements vary, but include individual annual training allotments; time off to attend the training; reimbursement for conference registration; and travel expenses or combinations of those things.

Seventy percent of survey respondents indicated that their office has no juvenile practice manual or they do not know if such a manual exists. Eighty-two percent responded that they work in offices that lack practice standards (expected practices) for attorneys handling juvenile cases, or do not know if such practice standards exist.

Only 13 percent of those responding were members of the Pacific Juvenile Defender Center's statewide juvenile defender listserv, which provides the only delinquency specific forum for juvenile defense counsel to discuss legal questions and developments in relevant case law and legislation. The figures were even lower for non-public defenders (4 percent) and those practicing in delinquency cases for less than two years (3 percent).

The survey responses confirm that some juvenile defense counsel practice in offices that provide ample training and ongoing resources, but many do not. Training at the very beginning of juvenile defense careers is minimal at best in many offices. The results suggest that well-meaning, hard working, but professionally ill-prepared attorneys represent all too many young people in our system.

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