

Energy Efficient Strategies for Defenders to Improve Conditions For Clients in Custody

Every defender encounters situations in which clients are experiencing inadequate treatment or conditions in an institutional setting. This is a short discussion of strategies defenders may use to address individual client situations as well as systemic issues. While people often think that conditions advocacy necessarily implicates litigation, the truth is that many problems can be resolved quickly and effectively through the straightforward mechanisms outlined below. These strategies are designed to have maximum impact with a level of time and resources defenders can realistically provide. Also included is a section on defender involvement in broader conditions work and systemic litigation.

Issues Relating to Individual Clients

With each of these strategies, always make sure to tell your client (or the parent, if they contacted you about the issues) what you plan to do, and get their consent to proceed. If you think you will want to look at records or reports, be sure to get a written release of information. Also, make sure you have your client's date of birth and institutional number or location.

1. **Make a Phone Call to the Facility Administrator.** Never underestimate the most low tech strategy of all. Using the telephone is a good strategy when there is something specific you want to accomplish, such as getting the facility to take your client to a doctor, or arrange a personal visit with someone not on the visiting list. Unless you know that the particular request is supposed to go through a probation officer, you can usually call the administrator's office and explain what it is you are requesting, and ask the administrator to see that your request is fulfilled. Keep a record of the person(s) you speak with, the date and what was said. Also ask for a return phone call or written response when any requested action is carried out.
2. **Send a Fax to the Facility Administrator.** If the request is one with some urgency, such as a situation where you need to have a mental health clinician check into a child's mental health status, you may want to fax a written request asking the administrator to investigate and take prompt appropriate action to address the situation. Faxing has the added advantage of giving you a written record of the request. Keep copies of the successful fax. You could also use e-mail, but because administrators get a huge number of e-mails, faxes stand out better as communications calling for a response.
3. **Contact the Ombudsperson or Grievance Coordinator.** If the request has to do with some sort of relationship issue (for example, trouble with a particular staff member) or incident in the facility, you may want to call the Ombudsperson, or if there isn't one, contact the grievance coordinator for advice.

4. **Use Your Contacts Inside.** If you do this work for awhile, you will develop relationships with staff and others, such as chaplains who work in the facility. Sometimes those contacts can help you to quickly address a situation, such as seeing to it that your client gets into a particular program, or receives a needed service.
5. **Write a Letter to the Facility Administrator.** If the issue involves issues that are very serious, or your less formal attempts to resolve them fail, write a letter to the administrator of the facility asking for investigation or specific action, outlining what you know about the matter, and asking for a prompt written response. Send a copy to your client (and parent if they contacted you with respect to the matter). In some instances you may want to cc: copy recipients with an interest in the particular type of issue. For example, if your request for action relates to something in an ongoing lawsuit, you may wish to cc: the attorneys in that case, or if the request relates to something involving mental health treatment, you might want to cc: the mental health staff who would be involved in the investigation and response.
6. **Notify the Licensing or Regulatory Agency.** If the facility or placement is licensed, or there is a regulatory agency, there may be a complaint process for investigation and action in individual cases. For example, group homes in California are licensed by the California Department of Social Services. Children may file complaints through the Foster Care Ombudsman (<http://www.dss.cahwnet.gov/pdf/pub379.pdf>), and any person may file complaints directly with the agency. When such regulatory control exists, you can help your client to obtain the forms, fill them out, and file the complaint, or simply file the complaint yourself. Typically, state law requires investigation and response in a specified period of time, and complaints are retained in the licensing file.
7. **Contact the Inspector General or Internal Affairs Agency.** Sometimes states have a separate agency charged with investigating and taking action in cases of official wrongdoing by state agencies and employees. Typically such agencies have hotlines, and allow you to provide information in a confidential manner. Inspectors General and Internal Affairs agencies have broad investigative powers and can be useful in situations involving extremely sensitive issues such as sexual abuse or other criminal behavior by facility staff. Defenders should not hesitate to contact these agencies to address mistreatment of their clients.
8. **Make a Child Abuse Report.** Most states have provisions for the filing of complaints in relation to physical or sexual abuse of children, and this includes abuse by staff in facilities or law enforcement officers. These reports may be confidentially filed, and the child welfare agency in the jurisdiction must respond to them. You may file such a report on behalf of your client, or assist the client in filing their own complaint.
9. **Involve Specialty Advocates for Assistance.** A disproportionate number of youth in juvenile justice have disabilities qualifying them for special education services, or calling for services for developmental disabilities or mental health conditions. While an increasing number of defender offices are able to address these needs in house, many do not have the resources at this point. Accordingly, in the individual cases where you need help, contact your local Protection and Advocacy (P & A) office, or other agencies that provide educational, developmental disabilities and mental health advocacy services. Normally, you will be able

to accomplish the referral with a telephone call, so long as you can provide sufficient identifying information for the agency to follow up.

10. **Help your client find a lawyer.** Unfortunately, there will be times when something so terrible happens your client has the grounds for filing a tort action (for example, your client is beaten by staff or suffers from serious medical neglect). Consistent with the rules on lawyer referrals in your jurisdiction, you and your office can be helpful in giving the names of lawyers or offices that handle these kinds of cases, and agencies that will refer your client to lawyers that take such cases on a pro bono basis. For example, many bar associations have pro bono panels, and occasionally non-profit advocacy group will take individual cases if resolving the issue will have a broader effect. In some jurisdictions, too, there are law firms that will handle conditions cases on a contingent fee basis, but even then, representation is available primarily in extreme cases involving serious injury or death, where there is likely to be a substantial award of damages. If the case will be against a governmental entity, there are often jurisdictional time limits for filing claims, so there is a need to act quickly.

Systemic Conditions Issues¹

Some of the conditions issues you encounter will affect groups of youth or systemic problems. Defenders may play an important role in bringing such issues to light and making sure they are addressed. Some systemic issues will lend themselves to the same, simple strategies outlined above for individual clients. Others will call for enlisting the help of other agencies and organizations.

1. **Call, Fax and/or Write Letters to the Facility Administrator.** If it is a straightforward issue, a simple communication may be adequate to resolve the problem. For example, if you learn that youth have not been giving their one hour of outdoor exercise, or that the heating system is broken, this may be the most expedient way to alert the administrator and get the problem fixed. As in the individual case situations, keep a record of who you talk to, what was said, and copy others who need to be aware of your inquiry (for example, the Los Angeles County Public Defender letters on conditions in Division of Juvenile Justice facilities.)
2. **Involve State Regulatory Agencies.** As in the individual situation, there may be agencies that license the facility, or that are charged with inspecting and assuring compliance with state law and facility regulations. For example, if state regulations call for a full day of school to be provided, and it is not happening, or if the facility is seriously overcrowded, this could be grounds for complaint. If such grounds exist, you may want to write a letter asking that a particular issue or issues be investigated and that appropriate action be taken to correct noncompliance. You should cc: the institutional administrator, any agencies that share responsibility over the issue (for example, educational agencies) and consider cc:ing the presiding juvenile court judge, and juvenile justice commission or the grand jury.
3. **Contact the Inspector General or Internal Affairs Agency.** Again, Inspector General or Internal Affairs agencies investigate and take action in cases of official wrongdoing by state agencies and employees. Depending on the jurisdiction, these agencies also perform audits of whether state agencies are meeting their statutory obligations in the operation of facilities.

¹ Thanks to Dana Shoenberg, Center for Children's Law and Policy for her helpful ideas on systemic advocacy.

Thus, an Inspector General might investigate the use of force or solitary confinement in a particular facility and release a public report. Defenders should not hesitate to provide such agencies with evidence of systemic malfeasance in juvenile facilities.

4. **Engage the Ombudsperson.** Because of their unique relationships inside and outside the facility, the ombudsperson can sometimes be a good ally in helping to resolve systemic issues. For example, the ombudsperson could be the conduit for passing on complaints about visiting or mail policies that could be resolved in a non-confrontational manner.
5. **Work with Regional or National Initiatives to Improve the JJ System.** Defenders may be important players in bringing conditions reform to their local systems. For example, defenders in sites all over the country work with stakeholder groups from their jurisdiction in the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI). While much of JDAI focuses on bringing detention practices into line with core values, and reducing unnecessary detention, it also calls for sites to work for improved conditions of confinement. Through JDAI, assessment teams composed of people from inside and outside the system evaluate the facility in conformity with an objective instrument. The jurisdiction commits to making ongoing improvement in its facility, as guided by the facility assessments. Defenders may be helpful either in providing information to the assessment team on conditions or participating as team members. Assessment materials are available from Youth Law Center (<http://www.ylc.org/>) or the Center for Children's Law and Policy (<http://www.cclp.org/>), and Pathways to Juvenile Detention Reform, volume 6, *Improving Conditions of Confinement*, is available at www.aecf.org/publications.

Defenders may also play an important role in bringing their jurisdiction's attention to targeted systems reform initiatives. Some notable examples are the W. Haywood Burns Institute work on racial justice and overrepresentation of youth of color in the system (<http://www.burnsinstitute.org/>), and the Equity Project, which focuses on the treatment of Lesbian, Gay, Bisexual and Transgender youth, including those in residential settings in the juvenile system (<http://www.equityproject.org/>)

6. **Collaborate with Other Advocates to Expand Funding Options.** Sometimes the issues to be addressed require different or expanded funding. For example, if the issue is that youth with mental health treatment needs spend too much time in detention because of delayed access to Medicaid funding, defenders may want to partner with local stakeholders to resolve the barriers to Medicaid funding (see, for example, Burrell and Bussiere, "The Inmate Exception" and Its Impact on Health Care Services for Children in Out-of-Home Care in California (Youth Law Center, November 2002), http://www.ylc.org/publication_info?id=jj_bb2002)
7. **Help to Establish an Advocacy Clinic on the Grounds of the Facility.** Defenders may be able to encourage the development of an on-site legal clinic at the facility. The clinic may help youth with problems at the facility, or with external problems such as child custody, immigration, or special education, or both. Such clinics may have good benefits both for the youth and the facility. They can help the youth to analyze their problems in a constructive, realistic way, and they may provide a conduit for problems to be raised and addressed before they become worse. Having such a clinic also provides another resource for defenders to assure that their client's needs are met. Clinics may operate in conjunction with law school

student clinics, volunteer attorneys or paid attorneys (for example, the Public Counsel and Mental Health Advocacy Project in Los Angeles uses law school students, volunteers and paid attorneys in its clinic at all three at LA County Juvenile Halls).

8. **Advocate for Legislative and Regulatory Changes.** Defenders may play a significant role in strengthening statutes and regulations governing juvenile facilities. They may also be important voices in supporting legislation aimed at providing, funding for juvenile facilities improvement, strengthening facility standards, and assuring adequate oversight of the facilities. In addition, defenders may play a significant policy role in calling for system improvement through improved data collection on interventions and outcomes, and studies aimed at adopting model approaches or best practices from other jurisdictions (for example., the California Juvenile Justice Project, aimed at improving statewide data collection for juvenile justice had defender representation.)
9. **Collaborate with Protection and Advocacy Organizations (P&A).** Federal funding is provided to state or non-profit agencies in each state for protection of people with disabilities – P&A's have statutory authority to access individuals with disabilities and facilities where they reside; have access to client records; receive complaints about treatment at a facility, or have probable cause to believe that an individual has been subject to abuse or neglect. Some give additional authority to their P&A's. Because they have the legal right to go into institutions and to write investigative reports, P & A's can be helpful allies in investigating and resolving systemic such as special education, mental health services, and treatment of youth with disabilities. (See, <http://www.ndrn.org/>), for information about the laws governing P & A work, and for state contacts.)
10. **Partner With Other Defenders.** The creation of the National Juvenile Defender Center in 1999 marked the beginning of a new era of mutual support and enhanced resources for juvenile defenders across the country. Defenders now have the ability to instantaneously communicate with other defenders and advocates to ask for information, strategies and legal authorities on any issue, including conditions (for example, the discussion on the NJDC defender list serve about shackling of juveniles and posting of resources by numerous offices involved in similar issues; National Juvenile Defender Center (<http://www.njdc.info/>)). In its previous incarnation as the ABA Juvenile Justice Center, NJDC authored a monograph on improving conditions, *Beyond the Walls: Improving Conditions of Confinement for Youth in Custody* (OJJDP 1997), and the NJDC Summit includes regular presentations on conditions work. Also, some public defender offices have developed individual units concerned with services to youth in facilities or improving conditions in facilities, or have partnered in litigation about conditions (for example, Los Angeles, District of Columbia, and Maryland).
11. **Work with Parent's Groups and Community Organizations.** Often the families and communities whose lives are touched by involvement in the justice system are passionate about issues needing attention. They have first hand experience with respect to what is or is not working in the facility, and be immensely helpful in drafting the agenda for reform. A goal for any facility should be to have a functioning parent's group that can facilitate communication between staff and families about their children, and serve as a conduit for feedback to the facility administration.
12. **Get the Word Out.** Conditions work may sometimes call for defenders to work with advocacy organizations that investigate and publicize harmful conditions or policies. For

example, Human Rights Watch (<http://www.hrw.org/children/justice.html>) has authored a series of hard hitting reports on juvenile justice issues and institutional conditions; and the Justice Policy Institute (<http://www.justicepolicy.org/>) explores a range of juvenile justice policy issues including overuse of incarceration. Defenders may also want to go directly to the press with bad conditions when that strategy is needed to bring attention to the need for change. Investigative reporters can prove immensely helpful in assuring that conditions issues are brought to the attention of the public and the officials responsible for addressing problems.

13. **Contact the Department of Justice Civil Rights Division.** Under the Civil Rights of Institutionalized Persons Act (CRIPA), the Attorney General of the United States has authority to investigate and if necessary litigate to remedy patterns or practices of violations of constitutional or federal statutory rights involving conditions of confinement in public institutions, including juvenile justice facilities. Similar authority for the Department also exists under 42 U.S.C. § 14141, regarding “administration of juvenile justice or the incarceration of juveniles.” Defenders may confidentially provide information to the Special Litigation Section, and ask that it be considered by the Department in determining whether to open an investigation. Letters may be written to the U.S. Department of Justice, Civil Rights Division, Special Litigation Section, 950 Pennsylvania Avenue, NW, Washington, DC 20035, or defenders may call (202) 514-6255, and ask to speak to a deputy chief who handles juvenile justice matters. Descriptions of section’s work, findings letters, settlements and court filings are on line at <http://www.usdoj.gov/crt/split/index.html>
14. **Involve Organizations/Attorneys in Bringing Systemic Litigation.** When all else fails, defenders may need to seek counsel to bring litigation to resolve systemic problems at the facility or placement. A number of organizations may provide advice on causes of action and legal standards and/or be willing to file litigation:

ACLU National Prison Project: <http://www.aclu.org/prison/index.html> (New York)
 Prison Law Office: <http://www.prisonlaw.com/> (California)
 Juvenile Law Center: <http://www.jlc.org/index.php> (Pennsylvania)
 Youth Law Center: <http://www.ylc.org/> (California)
 Center for Children’s Law and Policy: <http://www.cclp.org/> (Washington, D.C.)
 National Center for Youth Law: <http://www.youthlaw.org/> (California)
 Southern Poverty Law Center: <http://www.splcenter.org/index.jsp> (Alabama)
 Children’s Law Center, Inc.: <http://www.childrenslawky.org/> (Kentucky)
 Juvenile Rights Project: <http://www.jrplaw.org/> (Oregon)

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