

A CALL TO EXPAND POST-DISPOSITION REPRESENTATION OF YOUTH IN THE JUVENILE LEGAL SYSTEM

THE GAULT CENTER
Defenders of Youth Rights

OPEN CITY ADVOCATES

INTRODUCTION

Every year in this country, more than 700,000 children face delinquency charges in juvenile court.[1] The majority of those cases involve typical adolescent behavior, such as non-violent property offenses, drug use, and disorderly conduct.[2] Seventy-two percent of incarcerated youth are serving time for non-violent conduct.[3]

Racial disparities permeate the juvenile legal system. Black, Latino/a, and Native/Indigenous youth are disproportionately overrepresented at every stage of the juvenile court process, and those disparities increase as youth move deeper into the system of supervision and incarceration.[4]

Despite the rehabilitative notion of juvenile courts, the legal system young people experience does not protect them from the "stigmatization and reputational harms of criminal convictions."[5] A juvenile court adjudication increases barriers to education, job opportunities, housing, licensure, and military enlistment.[6] Young people also may face a loss of education, abusive conditions of confinement, and placement on a sex offender registry.[7]

Across the country, though, children's access to counsel often ends as soon as the juvenile court hearings in their delinquency cases conclude, even though they may be incarcerated or under state supervision[8] for years. A Gault Center survey of access-to-counsel laws, conducted for the 50th anniversary of the seminal U.S. Supreme Court case that affirmed children's constitutional right to counsel, found that "[o]nly 11 states provide for meaningful access to a lawyer after sentencing."[9] This time after sentencing, known in the juvenile legal system as the post-disposition phase, "may be the longest and most difficult phase of the delinquency process."[10]

In 2020, after the District of Columbia Court of Appeals released its decision in *In re N.H.M.*,[11] expanding DC youths' access to post-disposition counsel, Open City Advocates, which represented N.H.M., contacted the Gault Center to explore how to support the expansion of post-disposition representation in other jurisdictions.

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1 Nat'l Ctr. for Juv. Just., *National Estimates of Juvenile Court Processing for Delinquency Cases, All Cases*, EZAJCS: Easy Access to Juvenile Court Statistics: 1985-2020, https://www.ojjdp.gov/ojstatbb/ezajcs/asp/process.asp (last visited Dec. 5, 2023) (average of "all cases" taken across a five-year period from 2016-2020).

2 *Compare* Nat'l Ctr. for Juv. Just., *Year of Disposition by Age at Referral,* EZAJCS: Easy Access to Juvenile Court Statistics: 1985-2020, https://www.ojjdp.gov/ojstatbb/ezajcs/asp/selection.asp (last visited Dec. 5, 2023) (select years 2016, 2017, 2018, 2019, and 2020 under "Year of Disposition" and click "Show Table", revealing a total of 3,555,026 cases from 2016-2020) *with* Nat'l Ctr. for Juv. Just., *Year of Disposition by Age at Referral, supra* note 2 (select years 2016, 2017, 2018, 2019, and 2020 under "Year of Disposition" and "Person" under "Referral Offense" and click "Show Table", revealing a total of 1,110,787 of person offenses); *see also* Nat'l Juv. Def. Ctr., Defend Children Executive Summary: A Blueprint for Effective Juvenile Defender Services 2 (2016).

3 *United States of Disparities,* The W. Haywood Burns Inst., https://usdata.burnsinstitute.org/#comparison=2&placement=1&races=2,3,4,5,6&offenses=5,2,8,1,9,11,10&year=2017&view=map (last visited Dec. 5, 2023)

4 Nat'l Ctr. for Juv. Just., *Year of Disposition by Age at Referral, supra* note 2 (select years 2016, 2017, 2018, 2019, and 2020 under "Year of Disposition" and select one "Race" and one "Disposition" at a time to compare totals across race and disposition).

5 Megan F. Chaney, *Keeping the Promise of Gault: Requiring Post-Adjudicatory Juvenile Defenders,* 19 Geo. J. on Poverty L. & Pol'y 351, 373 (2012).

6 Nat'l Council of Juv. and Fam. Court Judges et al., Collateral Consequences of Juvenile Court Involvement: Obstacles to Opportunities 1 (2020).

7 *See* Chaney, *Keeping the Promise of Gault, supra* note 5, at 373; *see also* Nat'l Council of Juv. Fam. Court Judges et al., Collateral Consequences, *supra* note 6, at 2.

8 Jurisdictions across the country use varying language – including probation, parole, court, or community supervision – to describe pre- and post-disposition periods during which a youth is generally subject to numerous conditions or rules, is closely monitored by a probation officer or other court-affiliated government employee, may be subject to electronic monitoring, and is at significant risk of being charged with a violation of their supervision conditions and returned to court and/or detention or incarceration. Throughout this piece, references to supervision are intended to be inclusive of any such state or court control of a young person, regardless of the jurisdiction's terminology for such oversight.

9 Nat'l Juv. Def. Ctr., Access Denied: A National Snapshot of States' Failure to Protect Children's Right to Counsel 31 (2017).

10 *Id.* at 32.

11 *In re* N.H.M., 224 A.3d 581 (D.C. 2020).

We reviewed analyses of post-disposition representation of youth, surveys of state laws, and relevant court decisions; talked with youth defenders who provide post-disposition representation; conducted virtual site visits of offices that focus on providing holistic post-disposition defense; and heard numerous stories of young people whose success in moving past their juvenile court involvement was catalyzed by post-disposition youth defense teams.

Every legal analysis, court decision, conversation with a youth defender, and story from a young person supported the same conclusion: young people who are incarcerated or otherwise under government supervision after juvenile court involvement must be represented by a specialized youth defender – and ideally a holistic youth defense team – until they are free from state control.

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Post-disposition legal representation helps young people understand complex legal situations, comply with confusing supervision conditions, stay safe in harmful and even dangerous facilities, and navigate the transition from court involvement, incarceration, and supervision back to their families, communities, and schools.

Despite these clear benefits, most youth across the country are left to navigate their incarceration, supervision, and reentry alone. This call to expand the post-disposition representation of youth in the juvenile legal system aims to be a first step in ensuring all youth have holistic post-disposition youth defense representation until they are no longer under the jurisdiction of the court.



A CALL TO EXPAND POST-DISPOSITION REPRESENTATION OF YOUTH IN THE JUVENILE LEGAL SYSTEM

✔ Children should be represented by qualified youth defense counsel throughout the duration of their juvenile court involvement and state supervision.

✔ Post-disposition representation should be provided both to children who are incarcerated or otherwise removed from their homes and to youth who are not removed from their home but are under probation supervision or other continuing court orders.

✔ Post-disposition representation should be holistic and capable of advocating for youth in appellate and other legal challenges, as well as the many systems implicated by juvenile court involvement, including education, housing, correctional facilities, health and treatment programs, probation, immigration, and others.

To make this a reality, youth defenders and advocates, court practitioners, and policymakers must work to reform state and local rules, laws, standards, and practices:

- Jurisdictions must ensure children are represented by qualified youth defense counsel throughout the duration of their court involvement and supervision and fully fund youth defense agencies and organizations to provide specialized, holistic defense services to all youth brought into the delinquency system.
- Youth defenders and youth advocates must challenge local practices and state laws that limit their ability to represent their youth clients after disposition.
- Youth advocates must work to adopt standards of practice that recognize the critical importance of post-disposition representation and state laws that require youth to be represented by qualified youth defense counsel throughout the duration of their juvenile court involvement and state supervision.
- Youth defenders should advance arguments that children have a constitutional right to counsel throughout the duration of their post-disposition incarceration and supervision.

WHY POST-DISPOSITION REPRESENTATION IS CRITICAL

"Leaving children and parents alone after disposition to maneuver through the bureaucratic morass of state corrections administrations and to bring the existence of mistreatment or the failure to implement disposition plans to the courts' attention is cruel, foolish, and dangerous." [12]

Every state keeps youth under its surveillance and authority after disposition (the "sentencing" hearing in a juvenile delinquency case). This post-disposition phase – which often lasts years – is profoundly important for young people's rights, wellbeing, and future outcomes. Yet, across the country, post-disposition is the point in a case when a young person has the least access to an attorney.

In a majority of states, statutes provide youth only a very limited right to counsel — or no right to counsel — during most post-disposition proceedings.[13] A small number of states – including Connecticut, DC, Illinois, Kentucky, Massachusetts, Maryland, Ohio, Puerto Rico, and Vermont – provide some post-disposition representation through public defender offices, but it is generally limited to youth who are incarcerated.[14] Children in a similarly small number of states have access to post-disposition representation only because it is provided by nonprofit organizations or law school clinics.[15]

Post-disposition legal representation could have life-changing impacts for hundreds of thousands of youth and their families. From 2016–2020, juvenile courts across the country processed, on average, more than 700,000 delinquency cases each year.[16] Each year during that same period, on average, more than 54,000 of those cases led to out-of-home placement, including incarceration, and nearly 245,000 resulted in probation.[17]

Data to determine exactly how many of these cases included post-disposition legal representation is unavailable. However, given the extremely limited state statutory frameworks that provide for such representation,[18] as well as youth defense system assessment reports indicating substantial gaps in the delivery of youth defense across the country,[19] the vast majority of children involved in these cases faced probation, placement, incarceration, and reentry without legal representation.[20]

This broad lack of access to post-disposition counsel sets children up for failure, undermines the purposes of the juvenile court system, and ultimately harms public safety.

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12 Wallace J. Mylniec, *In re Gault at 40: The Right to Counsel in Juvenile Court – A Promise Unfulfilled*, 44 Crim. L. Bull. 371 (2008).
13 Nat'l Juv. Def. Ctr., Access Denied, *supra* note 9, at 32.
14 *See, e.g.*, *id.* at 34 n.109.
15 *Id.* at 34.
16 Nat'l Ctr. for Juv. Just., *National Estimates of Juvenile Court Processing for Delinquency Cases, All Cases*, *supra* note 1 (average of "all cases" taken across a five-year period from 2016-2020).
17 Nat'l Ctr. for Juv. Just., *Year of Disposition by Age at Referral*, *supra* note 2 (choose "Year of Disposition" for row variable, "Disposition" for column variable, and select years 2016, 2017, 2018, 2019, and 2020 under "Year of Disposition" and click "Show Table"; average of the total figures under "Placed" and "Probation" were calculated).
18 *See* Nat'l Juv. Def. Ctr., Access Denied, *supra* note 9, at 31-5.
19 *See, e.g.*, *State Assessments*, The Gault Ctr., https://www.defendyouthrights.org/initiatives/state-assessments/ (last visited March 2, 2024).
20 *See also* Nat'l Juv. Def. Ctr., Access Denied, *supra* note 9, at 31-5.

Post-disposition representation increases young people's understanding of and trust in the system.

Importantly, "when youth have an attorney during this critical time, they are more likely to feel that the process is fair and to experience positive outcomes."[21] These positive experiences will yield safer outcomes for both youth and communities because young people who trust the process are more able to abide by that process and engage successfully in their community. The best way to ensure that young people can trust the legal process is ensuring that they have zealous, well-trained attorneys who will safeguard their rights and ensure their voices are heard until they are free from system involvement.

Post-disposition representation can protect young people from harm in facilities.

On any given day, nearly 25,000 children are held in some type of facility.[22] Institutional placements have minimal, if any, positive impact on future offending;[23] disrupt family and community relationships and education, which are critical for positive youth development;[24] and are frequently rampant with abuse.[25] And placement in these ineffective facilities comes at significant financial cost to the state.[26]

Unlike in the adult criminal legal system, youth who are sent to a facility at disposition often do not have a specific time limit for that placement. While adults sentenced to prison generally receive a sentence of some number of years, youth in many states are placed on "indefinite commitment."[27]

A lawyer representing youth while they are in placement can monitor conditions of confinement, assist youth in filing grievances, advocate for a speedy release, and ensure quality reentry planning.

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21 *See* Nat'l Juv. Def. Ctr., Access Denied, *supra* note 9, at 32; *see* Tamar R. Birckhead, *Toward a Theory of Procedural Justice for Juveniles*, 57 Buff. L. Rev. 1447, 1476-83 (2009); *see also* Nat'l Juv. Def. Ctr., Defend Children: A Blueprint for Effective Juvenile Defender Services 13 (2016).

22 *See, e.g.*, *The Facts Report*, Youth First Initiative, https://www.nokidsinprison.org/the-facts (last visited Jul. 26, 2023); *One Day Count of Youth in Residential Placement Facilities*, Off. of Juv. Just. and Delinq. Prevention, https://ojjdp.ojp.gov/statistical-briefing-book/corrections/faqs/qa08201 (last visited March 2, 2024).

23 *See*, *e.g.*, David Huizinga et al., The Effect of Juvenile Justice System Processing on Subsequent Delinquent and Criminal Behavior: A Cross-National Study 1 (2004); Thomas A. Loughran et al., *Estimating a Dose-Response Relationship Between Length of Stay and Future Recidivism in Serious Juvenile Defenders*, 47 Criminology 699, 701 (2009); Holly Nguyen et al., *Institutional Placement and Illegal Earnings: Examining the Crime School Hypothesis*, 33 J. Quantitative Criminology 207 (2017).

24 Edward P. Mulvey & Carol A. Schubert, Smarter Use of Placement Can Improve Outcomes for Youth and Communities 2, 3 (2014).

25 *See, e.g.*, Richard A. Mendel, The Annie E. Casey Found., No Place for Kids: The Case for Reducing Juvenile Incarceration 2-8 (2011); Richard A. Mendel, The Annie E. Casey Found, Maltreatment of Youth in U.S. Juvenile Corrections Facilities: An Update 2-3 (2015) ("Nearly 10 percent of youth incarcerated in state-operated or state-funded juvenile corrections facilities reported being victimized sexually by staff or other youth in their facilities, and half of the victimized youth reported incidents involving physical force, threats or other forms of coercion *and* unwanted genital contact."); *see also* Lisa Gartner, *Beaten, Then Silenced*, The Philadelphia Inquirer (Feb. 20, 2019), https://www.philly.com/crime/a/glen-mills-schools-pa-abuse-juvenile-investigation-20190220.html; Mike Catalini, *A New Jersey Youth Detention Center had 'Culture of Abuse,' New Lawsuit Says*, Associated Press, (Jan. 17, 2024), https://apnews.com/article/new-jersey-justice-youth-detention-sexual-abuse-75ef0e8bfd0a6f9b82497eb1aee7c9de.

26 Just. Pol'y Inst., Sticker Shock 2020: The Cost of Youth Incarceration 1 (2020) ("In 2014, when the Justice Policy Institute first analyzed the cost of secure youth confinement, 33 states and the District of Columbia reported an annual cost per youth that eclipsed $100,000. In 2020, despite more than a half-decade of falling youth arrests and declining rates of youth incarceration since 2014, 40 states and Washington, D.C. report spending at least $100,000 annually per confined child, with some states spending more than $500,000 per youth per year. The average state cost for the secure confinement of a young person is now $588 per day, or $214,620 per year, a 44 percent increase from 2014. These cost figures over a six-year period represent the growing economic impact of incarcerating youth. However, the long-term impact of these policies extends well beyond the fiscal cost.").

27 Megan F. Chaney, *Postadjudicatory Juvenile Defense Attorneys: More Thoughts on Reimaging Juvenile Justice*, 42 Cap. U. L. Rev. 491, 506 (2014) ("The length of detention is indeterminate because the child is not adjudicated delinquent in order to punish the child. The child will spend whatever time in treatment, on probation, or in a residential facility that is necessary for rehabilitation. In some instances, the child may be detained past the twenty-first, or even twenty-fifth, birthday—depending on the state statute mandating the rules for commitment. The state is responsible for determining when the child is rehabilitated, as well as how best to accomplish this goal. This task is somewhat amorphous. Meanwhile, the child is torn away from what is familiar—family, friends, schools, and neighborhoods.").



Post-disposition legal representation can mitigate the harms of supervision.

While youth in facilities have unique circumstances that post-disposition lawyers must address, post-disposition representation is also critical for youth who remain at home and in their communities. Probation supervision is:

> a form of correctional control that imposes onerous requirements on youth and families that can include frequent meetings and costly fines and fees. Probation requirements can prevent youth from leaving their homes to socialize with friends, dictate who they can and cannot interact with, and subject them to invasive searches without cause. Further, traditional probation models that focus on surveillance and compliance put youth at risk of revocation and deeper system involvement, pushing them into out-of-home placements and contributing to the overincarceration of young people across the country.[28]

Hundreds of thousands of young people are on probation across the country.[29] Probation is the most commonly ordered disposition when youth are adjudicated delinquent: in 2018, 65 percent of youth adjudicated delinquent, or 139,000 youth, were placed on probation.[30] Conditions of probation are frequently confusing, vague, and unduly burdensome and can be of an indefinite duration.[31]

Black, Latino/a, and Native/Indigenous youth are more likely than white youth to be placed on probation, versus being diverted from the system.[32] And Black youth are more likely to be deemed noncompliant by probation officers and thereby disproportionately confined for technical violations of probation, compared to white youth.[33]

A defense attorney representing youth on probation can seek to modify or limit conditions, advance youth rights with the probation department, promote youth-driven supports, defend against alleged probation violations and help prevent incarceration, and advocate for youth and their families in a system that an adolescent should not be forced to navigate alone.

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28 Samantha Harvell et al., Transforming Juvenile Probation: Restructuring Probation Terms to Promote Success 2 (2021).

29 Nat'l Ctr. for Juv. Just., *Year of Disposition by Age at Referral*, *supra* note 2 (choose "Year of Disposition" for row variable, choose "Disposition" for column variable, and click "Show Table").

30 Nat'l Ctr. for Juv. Just., *National Estimates of Juvenile Court Processing for Delinquency Cases*, *supra* note 1 (Based on the total number of adjudicated youth on probation (142,400) against the total number of adjudicated cases (219,300) in 2018, 65% of youth were placed on probation).

31 *See* Dafna Gozani et al., Nat'l Ctr. for Youth L. & W. Haywood Burns Inst., Ending Endless Probation 1 (2021).

32 The Annie E. Casey Found., Transforming Juvenile Probation: A Vision for Getting it Right 13 (2018).

33 *See* Nat'l Council of Juv. and Fam. Ct. Judges, The Role of the Judge in Transforming Juvenile Probation: A Toolkit for Leadership 56 (2021); The Annie E. Casey Found., Eliminate Confinement as a Response to Probation Rule Violations 7 (2020).

Post-disposition representation can decrease racial and other disparities.

Access to counsel post-disposition affords youth critical protections against a system that incarcerates Black youth four times more frequently than white youth, Native/Indigenous youth three times as frequently, and Latino/a youth almost twice as frequently.[34] Though Black youth comprise only 14 percent of the national youth population,[35] in 2019 they comprised 42 percent of youth in placement[36] and 33 percent of youth on probation.[37] In contrast, white youth make up half of the national youth population and account for 31 percent of youth in placement[38] and approximately 44 percent of youth on probation.[39]

Lawyers play a vital role in reducing these disparities. "It is the lawyer's role as an agent of change and protector of the rule of law to expose the power differentials that lead to injustice."[40] Structural, institutional, and systemic biases can produce unfair and unjust results for Black, Latino/a, and Native/Indigenous youth. Post-disposition counsel can highlight disparities data and zealously argue for fair, nondiscriminatory, and rehabilitative services for their clients.

Disparities extend beyond race. A disproportionate number of young people in the juvenile legal system have experienced trauma,[41] live with a disability,[42] and/or identify as LGBTQ+.[43] Access to post-disposition counsel is imperative to ensure youth receive specialized supports and services that promote their success.[44] Post-disposition representation is a vital tool to combat these disparities.

34 *See* W. Haywood Burns Inst., Stemming the Rising Tide: Racial & Ethnic Disparities in Youth Incarceration & Strategies for Change 1-4 (2020); *see also* Richard A. Mendel, The Sent'g Project, Why Youth Incarceration Fails: An Updated Review of the Evidence 18 (2022).

35 *Child Population By Race and Ethnicity in United States*, The Annie E. Casey Found., https://datacenter.aecf.org/data/tables/103-child-population-by-race-and-ethnicity?loc=1&loct=1#detailed/1/any/fase/1095,2048,574,1729,37,871,870,573,869,36/68,69,67,12,70,66,71,72/423,424 (last visited Jul. 26, 2023); Nat'l Ctr. for Juv. Just., *Disposition by Race*, EZAJCS: Easy Access to Juvenile Court Statistics: 1985-2020, https://www.ojjdp.gov/ojstatbb/ezajcs/asp/selection.asp (last visited Jul. 24, 2023) (choose "Disposition" for row variable, choose "Race" for column variable, select "2019" under Year of Disposition and click "Show Table").

36 Nat'l Ctr. for Juv. Just., *Disposition by Race*, *supra* note 35 (choose "Disposition" for row variable, choose "Race" for column variable, select "2019" under Year of Disposition and click "Show Table").

37 *Id.*

38 *Child Population By Race and Ethnicity in United States*, *supra* note 35.

39 Nat'l Ctr. for Juv. Just., *Disposition by Race*, *supra* note 35 (choose "Disposition" for row variable, choose "Race" for column variable, select "2019" under Year of Disposition and click "Show Table").

40 Chaney, *Postadjudicatory Juvenile Defense Attorneys, supra* note 27, at 518.

41 Jessica Feierman & Lauren Fine, Juv. Law Ctr, Trauma and Resilience: A New Look at Legal Advocacy for Children in the Juvenile Justice and Child Welfare Systems 4 (2014) ("Experts have found that at least 75 percent of youth in the juvenile justice system have experienced 'traumatic victimization' and 50 percent have posttraumatic stress disorder (PTSD).").

42 Jennie L. Shufelt & Joseph J. Cocozza, Nat'l Ctr. for Mental Health and Juv. Just., Youth With Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Survey 2, 4 (2006).

43 *See, e.g.*, Alexi Jones, *Visualizing the Unequal Treatment of LGBTQ People in the Criminal Justice System,* Prison Pol'y Initiative (Mar. 2, 2021), https://www.prisonpolicy.org/blog/2021/03/02/lgbtq/; Kerith J. Conron, The Williams Inst., LGBT Youth Population in the United *States* (2020)*;* Angela Irvine & Aisha Canfield, *The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population*, 24 J. Gender, Social Pol'y & L. 242 (2016).

44 *See, e.g.*, Marty Beyer, Nat'l Juv. Def. Ctr., A Developmental Framework for Juvenile Disposition and Post-Disposition Advocacy (2017); Nat'l Council of Juv. and Fam. Court Judges et al., Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Gender Expression (SOGIE) 1 (2017).

Holistic post-disposition representation helps young people succeed.

Throughout this project, we heard numerous stories of young people who, without advocacy and assistance from holistic youth defense teams, may not have been able to overcome the countless barriers the juvenile legal system erected between them and their future success. The experiences of these young people show not only the value of post-disposition representation, but also the need for that representation to be holistic, supporting the young person as they navigate the many systems and requirements implicated by juvenile court involvement.

Throughout **Michael**'s[45] time in the juvenile legal system, the Department of Juvenile Services he was forced to move to seven different placements, including many out of state. During these years, Michael diligently attended school, but because of the many placement changes, his high school transcript showed only two credits. His post-disposition youth defense attorney collaborated with an education attorney to track down the 14 credits he had earned from the various schools he had attended. Michael was then able to graduate high school just one semester later than he intended.

Bryan was simultaneously managing juvenile supervision and adult probation. After returning from a secure juvenile facility, he was doing well on supervision: going to school, living with his grandmother, and keeping in touch with his caseworker. He felt like he was getting his life back on track, attending high school and building new friendships. Adult probation was harder to manage, especially while juggling school and juvenile supervision. He forgot to attend a few meetings with his adult probation officer and missed some drug tests. Bryan soon found himself back in court, facing revocation and possible jail time. His post-disposition attorney attended court with him and explained to the court how well Bryan was doing on juvenile supervision. As a result, the judge did not revoke his adult probation and instead kept him on community supervision, keeping Bryan with his family, in school, and out of jail.

At the age of 15, **Kendra** was committed to the Department of Juvenile Services (DJS), where she was placed in a co-ed long-term secure facility. Kendra had a long history of trauma, including as a victim of physical abuse, sexual abuse, and sex trafficking. Although some at DJS knew about Kendra's trauma history, the facility staff made no modifications to internal policies. For example, Kendra was physically patted down by staff every day after she attended school. One of these pat-downs triggered Kendra's past trauma. She pulled away from the guard and verbally objected. In response, multiple guards tackled Kendra, injuring and humiliating her and compounding her trauma. As soon as her post-disposition attorney learned about the incident, they successfully advocated for DJS to remove Kendra from the secure facility and place her in a more therapeutic environment.

Damien was under juvenile court supervision for three years. During a regular team meeting to discuss Damien's probation requirements and progress, the juvenile agency promised to help Damien with placement in a school that could meet his special education and transportation needs. Two months later, the agency arrested Damien and initiated proceedings to revoke his community placement for not attending school as required. The agency denied making any promises to help Damien enroll in school or to provide any other support, but because his post-disposition attorney had attended all his team meetings, they were able to prove that the agency had not only promised such support, but also had failed to provide it. Damien won his revocation hearing and successfully completed his supervision in the community.

45 All client names in this report and some details have been changed to protect client confidentiality.

As **Marco** was approaching the end of a period of commitment in a juvenile facility, he was concerned about challenges his family was facing with housing. Marco was an excellent student and was fearful his family's housing insecurity would jeopardize his ability to graduate from high school. Working together, Marco and his post-disposition attorney convinced the Department of Juvenile Services to deviate from their usual reentry plans and instead help Marco enter an independent living program, where he learned essential life skills while residing in his first apartment. Marco graduated that spring with numerous awards, including best attendance and most dedicated student.

The day before a scheduled court date, a judge ordered **Anthony** to be released from placement. The staff at his placement were not aware of the court order, so they shackled Anthony and made him board a facility bus to go to court. As the bus was pulling away from the garage, Anthony saw someone from his post-disposition legal team standing in front of the bus, waving the court order. She informed the driver that Anthony should not be on the bus and provided the court's order. The driver returned to the facility, where Anthony got off the bus and his shackles were removed. Anthony attended court that day in clothing of his own, without dehumanizing shackles, and with a dedicated advocate by his side.

Amari loved to play basketball. After returning from a secure juvenile facility, he was excited to enroll in a high school with one of the city's best basketball teams. When Amari left the juvenile facility, they put a GPS monitor on his ankle, explaining that this was standard protocol for everyone leaving the facility and that he was required to wear it for 30 days. When Amari showed up at tryouts for the basketball team at his new high school, the coach told him he could not try out for the team because of the GPS monitor. Amari called his post-disposition youth defense attorney and asked if they could help. The attorney negotiated the removal of Amari's GPS monitor that same day. The post-disposition attorney also called the coach to let him know just how focused on basketball Amari was and that he had only been placed on GPS monitoring due to standard procedures, not anything Amari had done. The coach let Amari join tryouts on the second day. Given the opportunity to share his talents, Amari made the basketball team.

Corey had been working with his post-disposition team all summer on his probation case, and the 13-year-old was making great strides. Then, a crisis struck: Corey's mom lost her job and soon after, his family was evicted from their home. Even though Corey had been doing well on probation, his family's sudden housing crisis put his progress, and his freedom, in jeopardy. A sad reality for children in the legal system is that factors beyond their control — where they live, what school they attend, their access to transportation — can negatively impact their ability to meet their court requirements, leading to further punishment. By working together, Corey and his post-disposition team made sure that when he came back into court, he had a place to live, a school to attend, and the stability necessary for the judge to close out his probation.[46]

46 *Corey's Journey Back From Homelessness*, La. Ctr. for Child. Rights (Oct. 17, 2018), https://lakidsrights.org/2018/10/coreys-journey-back-from-homelessness/.

SPOTLIGHTS

Programs Providing Holistic Post-Disposition Representation

The number and variety of direct and collateral consequences young people face after juvenile court involvement necessitate ongoing and comprehensive legal assistance. As part of this project, the Gault Center conducted virtual site visits with four nonprofit organizations that provide holistic legal services – assistance navigating all legal and other obstacles that result from juvenile court involvement – to youth in the post-disposition phase of their case.

Lawndale Christian Legal Center (LCLC): LCLC is a nonprofit organization providing continuous post-disposition representation for young people in the Lawndale, Illinois, neighborhood. Lawyers work with youth on issues such as early probation termination, education, employment, and mental health goals. When youth are sent to facilities further outside city limits, lawyers advocate for youth to be brought back to the only secure facility in the city and connect the youth with aftercare specialists after release.

Louisiana Center for Children's Rights (LCCR): LCCR is a nonprofit holistic legal defense office with a contract to defend youth in New Orleans, Louisiana. LCCR represents children based on their expressed interests both inside and outside the courtroom. Every youth client has access to a full legal team that includes "a lawyer, social worker, investigator, and youth advocate – to address both the causes and consequences of an arrest."[47] In addition to representing youth in their legal case, post-disposition advocacy may include assistance in securing special education services, employment, or mental health treatment.[48]

Moran Center for Youth Advocacy: The Moran Center is a community-based legal aid organization that provides continuous and comprehensive representation for young people up to the age of 26 and their families in Evanston, Illinois. The Center's holistic post-disposition advocacy includes a robust criminal record relief practice and wraparound therapeutic/case management services. Representation continues until the youth's sentence is terminated, and social services may extend beyond the closure of the legal case.

Open City Advocates (OCA): OCA provides youth-centered legal defense and holistic advocacy for young people after disposition in juvenile court. In the District of Columbia, Black youth are more than 15 times more likely to be held in placement than white youth.[49] In fact, 94 percent of youth committed to post-disposition placement in the District in fiscal year 2020 were Black,[50] even though Black youth make up only about 52 percent of DC's youth population.[51] These stark racial disparities compelled OCA to focus on ensuring youth have access to post-disposition representation. District-level data also shows that 34 percent of incarcerated youth are convicted of a new crime within six months of release.[52] By comparison, the rate of reconviction for OCA's clients is 17 percent. For OCA clients who were reconvicted, 100 percent were for less serious crimes than they had previously committed. Lastly, OCA clients reported significantly higher rates of employment and school re-enrollment than their peers not represented by OCA.[53]

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47 *About Us*, La. Ctr. for Child. Rights, https://lakidsrights.org/about-us/ (last visited Jul. 26, 2023).

48 *Juvenile Public Defense*, La. Ctr. for Child. Rights, https://lakidsrights.org/we-represent/juvenile-public-defense (last visited Jul. 19, 2023).

49 *Compare* Nat'l Ctr. for Juv. Just., *Offense Profile by Race/Ethnicity for United States, 2019*, EZACJRP: Easy Access to the Census of Juveniles in Residential Placement: 1997-2021, https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/Selection_cjrp.asp (last visited on March 5, 2024) (select "District of Columbia" under "Select a state", select "2019" under "Select a year", and select "Offense profile by race/ethnicity" showing that 3 white youth were in placement, compared to 108 Black youth in 2019 in DC), *with Race and Ethnicity of Adults and Children*, Off. of the Deputy Mayor for Educ., https://edscape.dc.gov/page/pop-and-students-race-and-ethnicity-adults-and-children (last visited on March 5, 2024) (highlighting that in 2019, there were 30,390 white children in DC, compared to 67,266 Black children, which when combined with the placement rates, results in a rate of approximately 9.9 per 100,000 white youth sent to placement, compared to 106 per 100,000 Black youth sent to placement).

50 *Youth Population Snapshot*, Dep't of Youth Rehabilitation Servs., https://dyrs.dc.gov/page/youth-snapshot (last visited March 5, 2024).

51 *Race and Ethnicity of Adults and Children,* Off. of the Deputy Mayor for Educ., https://edscape.dc.gov/page/pop-and-students-race-andethnicity-adults-and-children (last visited March 5, 2024).

52 Dep't of Youth Rehabilitation Servs., FY 2016 Performance Accountability Report 5.

53 Data on file with Open City Advocates.

EXPANDING POST-DISPOSITION REPRESENTATION

Jurisdictions can expand post-disposition representation of youth through a variety of methods, including reforming state and local rules and laws, challenging the practice of appointing counsel under existing rules and laws, implementing standards, and working to expand the recognition of children's constitutional right to counsel post-disposition.

Reforming state and local rules and laws.

Post-disposition counsel can help youth navigate the myriad systems, barriers, and rules imposed by the juvenile legal system, supporting their successful completion of juvenile court jurisdiction. Policymakers and youth defenders and advocates should work to reform state and local court rules and laws to ensure that young people are represented by qualified counsel throughout the time they are under court or state jurisdiction.

Challenging the practice of appointing counsel under existing rules and laws.

Existing local and state rules and laws may already support the appointment and compensation of post-disposition counsel, even if local practices do not. Youth defenders should closely examine laws and court rules governing the appointment of counsel, move to be appointed to represent youth after disposition, and appeal any denial of appointment or compensation.



CASE STUDY

How a Nonprofit Challenged DC Law & Expanded Children's Post-Disposition Representation

In 2016, Nathan[54] pled involved to his second delinquent act in two years, and the DC Family Court ordered him restrictively committed to the custody of the DC Department of Youth Rehabilitative Services (DYRS).[55] After the disposition hearing, Nathan's trial counsel moved to withdraw, and an attorney from a local nonprofit, Open City Advocates (OCA), asked the court to appoint her to represent Nathan throughout the duration of his commitment to DYRS.[56]

The court appointed the OCA attorney to represent Nathan but specified that she would be compensated only for representation at "future Reviews of Commitment before the court."[57] The appointment order specified that if the OCA attorney were to represent Nathan at any DYRS hearings or meetings, she would not be compensated by the court for her time or services.[58]

OCA appealed the Family Court's appointment order, arguing that two specific types of DYRS hearings – Team Decision Making Meetings and Community Status Review Hearings – qualify for paid representation under DC's Criminal Justice Act (CJA), which governs the appointment of counsel in criminal and juvenile courts.[59]

At Team Decision Making Meetings, "the participants consider whether the services and placement currently provided have been effective and decide what further steps should be taken to ensure the child's rehabilitation and welfare."[60] A Community Status Review Hearing is held "if a child is committed to DYRS and placed in the community but then violates their conditions of release such that revocation is considered."[61]

The DC Court of Appeals found that a child is entitled to paid representation at both Team Decision Making Meetings and Community Status Review Hearings. *In re N.H.M.* was decided on statutory grounds, under the CJA:

> The scope of court-appointed, paid representation extends to "every stage of the proceedings from [the qualifying] person's initial appearance before the court through appeals, *including ancillary matters appropriate to the proceedings*." D.C. Code § 11-2603 (emphasis added). In particular, "[a] child alleged to be delinquent ... is entitled to be represented by counsel *at all critical stages of [Family] Division proceedings*, including the time of admission or denial of allegations in the petition and all subsequent stages." D.C. Code § 16-2304(a) (emphasis added). Read together, these provisions provide children the right to compensated appointed counsel at "all critical stages of [Family] Division proceedings" and "all ancillary matters appropriate to [those] proceedings."[62]

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54 All client names in this report and some details have been changed to protect client confidentiality.
55 *In re* N.H.M., 224 A.3d 581 (D.C. 2020).
56 *Id.* at 583.
57 *Id*. at 584.
58 *Id*.
59 The Gault Center, then known as the National Juvenile Defender Center, appeared as amicus in support of N.H.M. and Open City Advocates in this appeal to the DC Court of Appeals.
60 *N.H.M.*, 224 A.3d at 588.
61 *Id*.
62 *Id*. at 587.

> We conclude that DYRS Team Decision Making Meetings held pursuant to § 16-2323(g) are ancillary to post-disposition judicial hearings held pursuant to § 16-2323(h) because these agency proceedings clearly envision representation by counsel and are subject to court review at which there is a conceded right to paid representation. Thus Team Decision Making Meetings are agency proceedings at which paid representation must be provided under the CJA.[63]
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> [T]he decision to rescind a child's community release (which necessarily modifies their placement and likely modifies their services) after such a hearing is directly reviewable by a court under the same procedure as the decisions made in Team Decision Making Meetings, D.C. Code § 16-2323(h). We conclude that Community Status Review Hearings too are ancillary to a critical stage of Family Division proceedings and thus are agency proceedings at which paid representation must be provided.[64]

The DC Court of Appeals found that, "as our law assigns the court broader jurisdiction over children than adults, so too does it afford children a broader right to paid representation."[65]

Following the decision in *In re N.H.M.*, the DC Superior Court issued Administrative Orders 22-08 and 22-09, establishing training, appointment, and compensation standards for public defenders and CJA panel attorneys providing representation to youth post-disposition.

Ensuring post-disposition representation of youth through standards.

Since the IJA/ABA Juvenile Justice Standards were first published more than 45 years ago, national standards governing juvenile court systems, youth defense systems, and defense attorney performance have universally called for youth to be represented by counsel throughout the post-disposition phase of a delinquency case. State and local jurisdictions should adopt similar standards.

Institute of Judicial Administration & American Bar Association:

- "Legal representation should . . . be provided . . . in all proceedings arising from or related to a delinquency . . . action, including mental competency, transfer, postdisposition, probation revocation, and classification, institutional transfer, disciplinary or other administrative proceedings related to the treatment process which may substantially affect the [youth's] custody, status or course of treatment. The nature of the forum and the formal classification of the proceedings is irrelevant for this purpose."[66]
- "If the client has been found to be within the juvenile court's jurisdiction, the lawyer should maintain contact with both the client and the agency or institution involved in the disposition plan in order to ensure that the client's rights are respected and, where necessary, to counsel the client and the client's family concerning the dispositional plan."[67]

63 *Id*. at 588.
64 *Id*. at 589.
65 *Id*. at 590.
66 *See* Am. Bar Ass'n, Juvenile Justice Standards: Standards Relating to Counsel for Private Parties 15-6, 67-9 (1980).
67 *Id*. at 188.

The Gault Center (formerly known as the National Juvenile Defender Center):

- "Counsel should stay in contact with the client and continue representing [them] while under court or agency jurisdiction. Counsel must reassure the client that counsel will continue to advocate on the client's behalf regarding post-disposition hearings, conditions of confinement, and other legal issues. Continued contact is especially important when the client is incarcerated."[68]
- "When the client chooses to appeal, trial counsel must file a notice of appeal and preserve the client's right to appeal. . . . When no appellate counsel is available, trial counsel should handle the appeal."[69]
- "Counsel must represent the client after disposition, including at post-disposition hearings."[70]
- "Counsel has a duty to independently collect information on the client's progress and monitor whether service providers and/or facilities are adhering to the terms of the disposition order[.]"[71]
- "[C]ounsel must advocate for the client to receive the services contemplated by the court and affirmatively raise the need for modification of previous court orders. Counsel must ensure that the state is meeting its obligation to provide access to social, medical, and psychological services. Counsel must respond to issues or complaints regarding safety of the client or conditions of the client's confinement[.]"[72]
- "For clients . . . whose health, safety, and welfare is at risk; or clients not receiving services as directed by the court, counsel must file motions for early discharge or dismissal of probation or commitment, early release from detention, or modification of the court order[.]"[73]
- "Counsel must inform the client of available legal processes for sealing and expunging juvenile records. Counsel should assist the client in obtaining these legal remedies."[74]
- "Counsel should receive notice and represent the client at probation/ parole review or violation hearings."[75]

The National Council of Juvenile and Family Court Judges' guidelines address the need for post-disposition representation when a youth is not placed outside their home:

- "All youth must be represented by counsel in the formal juvenile justice court, but that counsel should be involved in every juvenile justice court hearing. In order for counsel to be effective at this [post-disposition] stage of the juvenile justice court process, counsel must not only rely on the information provided by the probation officer, but should also independently speak with the youth, the youth's parent or legal custodian, and the service provider."[76]

68 *See generally* Nat'l Juv. Def. Ctr., National Juvenile Defense Standards 120 (2012) (explaining the role of counsel throughout the process of assisting a juvenile client).
69 *Id*. at 122.
70 *Id*. at 124.
71 *Id*.
72 *Id*. at 124-25.
73 *Id*. at 125.
74 *Id*. at 126.
75 *Id*. at 127.
76 Nat'l Council of Juv. and Fam. Court Judges, Enhanced Juvenile Justice Guidelines: Improving Court Practice in Juvenile Justice Cases, Chapter IX: Post Disposition Review (In Home) 6 (2019).

As well as when a youth is removed from their home:

- "Youth charged in the formal juvenile justice court must have qualified and adequately compensated legal representation in the formal juvenile justice court, and the same counsel should be involved at every hearing. A juvenile justice court should ensure that counsel remains active when a youth is placed out of the home under the continuing jurisdiction of the juvenile justice court."[77]

U.S. Department of Justice:

- "One of the most vital roles of counsel is to protect children against unjustified placement and incarceration and to guard against abuses within facilities. . . . The presence of counsel could help ensure successful placements and aftercare programming. When exposure to violence is discovered, defense counsel would have the ability to file legal motions to stop abuse and to remove the child from the facility where it is occurring. Children who do not have these protections have no recourse when they are mistreated in facilities where they are cut off from their families and other caring adults."[78]
- "Children in long-term state custody often suffer substantial deprivations of their civil and educational rights. Accordingly, post-disposition is a critical stage in delinquency proceedings for which counsel should be provided."[79]
- "Representation of Children shall cover all stages of the juvenile delinquency case, including pre-adjudicatory investigation, litigation, dispositional advocacy, and post-dispositional advocacy for as long as [the court] has jurisdiction over a Child."[80]

Expanding the recognition of children's constitutional right to counsel post-disposition.

In 1967, the U.S. Supreme Court affirmed in *In re Gault* that children have the right to counsel "at every step in the proceedings" of a delinquency case.[81] The Court noted that "counsel can play an important role in the process of rehabilitation,"[82] but its mandate for counsel applied only to adjudication hearings.

In the more than 55 years since *Gault*, federal courts have issued only scarce additional guidance about children's right to counsel after adjudication. However, some courts have made clear that to realize their constitutional rights, children require greater access to counsel than adults.

"...to realize their constitutional rights, children require greater access to counsel than adults."

For example, courts have long recognized that imprisoned adults have a fundamental constitutional right of access to the courts,[83] and U.S. Supreme Court decisions "have consistently required States to shoulder affirmative obligations to assure all prisoners meaningful access to the courts."[84] Prison authorities can fulfill this right for imprisoned adults by providing "adequate law libraries or adequate assistance from persons trained in the law."[85]

77 *Id*. at Chapter X: Post Disposition Review (Out of Home) 8.
78 Robert L. Listenbee, Report of the Attorney General's National Task Force on Children Exposed to Violence 187 (2012).
79 C.R. Div., U.S. Dep't of Just., Investigation of the St. Louis County Family Court, St. Louis, Missouri 21 (2015).
80 C.R. Div., U.S. Dep't of Just., Memorandum of Agreement Regarding the Juvenile Court of Memphis and Shelby County 15 (2012).
81 *In re* Gault, 387 U.S. 1 (1967).
82 *Id.* at n.64.
83 Bounds v. Smith, 430 U.S. 828 (1977).
84 *Id*. at 824.
85 *Id*. at 828.

Incarcerated youth also have a constitutional right of access to the courts.[86] However, because access to the courts must be "adequate, effective, and meaningful,"[87] "merely providing [youth] with access to a law library . . . would fail to assure meaningful access,"[88] as "without assistance [youth] could not make effective use of legal materials."[89] "[I]n order to make this right meaningful the State must provide [incarcerated youth] with access to an attorney. "[90]

At least one federal district court has held that a youth who is not incarcerated but is under state supervision, "undoubtedly has a right of access to the courts for the redress of any injustice in the proceedings leading to her adjudication as delinquent and commitment to DYS custody."[91]

"In addition, there is an independent constitutional right to counsel for juvenile appeals that is grounded in the Sixth Amendment's right to counsel as applied to the states through the Fourteenth Amendment's Due Process Clause."[92]

> At least one federal court of appeals has held that because *Gault* guarantees a juvenile the right to counsel during the delinquency adjudication stage, if the juvenile is entitled under the applicable state law to an appeal as of right from that adjudication, then he is also entitled to be represented by counsel on that first appeal.[93]

Youth defenders should, when consistent with their clients' stated interests, pursue claims that children have a constitutional right to post-disposition counsel under the Fifth and Fourteenth Amendments.

86 *See* Morgan v. Sproat, 432 F. Supp. 1130 (S.D. Miss. 1977); Germany v. Vance, 868 F.2d 9 (1st Cir. 1989); John L. v. Adams, 969 F.2d 228 (6th Cir. 1992).
87 *Smith*, 430 U.S. at 822.
88 *Adams*, 969 F.2d at 234.
89 *Sproat*, 432 F. Supp. at 1158.
90 *Adams*, 969 F.2d at 230.
91 *Vance*, 868 F.2d at n.7.
92 *Adams*, 969 F.2d at 237.
93 *Id.* at n.10.

CONCLUSION

Post-disposition representation supports the rehabilitative notion of the juvenile court system by 1) ensuring the court's orders are properly implemented and the disposition provides meaningful opportunities for young people to succeed, and 2) combatting the over-criminalization of youth, pervasive racial and ethnic disparities in the treatment of youth, and the fracturing of families and communities.

Youth defenders have a critically important opportunity after adjudication and disposition to continue ensuring their clients' rights are upheld and they are receiving the support and resources necessary to end their involvement with the system and reclaim their lives.

Ensuring that every young person is represented by qualified counsel for as long as that child is under court or state jurisdiction provides the legal protection that children deserve and that the Constitution demands.

Post-disposition representation by qualified youth defense counsel should:

- Extend throughout the duration of a young person's juvenile court involvement and state supervision.
- Be provided both to children who are incarcerated or otherwise removed from their homes and to youth who are not removed from their home but are under probation supervision or other continuing court orders.
- Be holistic and capable of advocating for youth in appellate and other legal challenges, as well as the many systems implicated by juvenile court involvement, including education, housing, correctional facilities, treatment programs, probation, immigration, and others.

Recommendations

- Jurisdictions must ensure children are represented by qualified youth defense counsel throughout the duration of their court involvement and supervision and fully fund youth defense agencies and organizations to provide specialized, holistic defense services to all youth brought into the delinquency system.
- Youth defenders must challenge local practices and state laws that limit their ability to represent their youth clients after disposition.
- Youth advocates must work to adopt standards of practice that recognize the critical importance of post-disposition representation and state laws that require youth to be represented by qualified counsel throughout the duration of their juvenile court involvement and state supervision.
- Youth defenders should advance arguments that children have a constitutional right to counsel throughout the duration of their post-disposition incarceration and supervision.

If you are interested in working to ensure children receive meaningful post-disposition representation in your jurisdiction and would like technical assistance, please contact the Gault Center at inquiries@defendyouthrights.org or Open City Advocates at info@opencityadvocates.org.



The Gault Center
www.defendyouthrights.org
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