

# Delaware Office of Defense Services Indigent Juvenile Defense Strategic Plan

*UPDATE as of March 2018*

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In September 2015, Delaware, through its Criminal Justice Council (CJC), was awarded the *OJJDP FY 2015 Juvenile Justice: Enhancing Youth Access to Justice Initiative* grant. As a result of this grant, the Delaware Office of Defense Services (ODS) drafted the Juvenile Defense Strategic Plan (Strategic Plan) for the improvement of indigent juvenile defense delivery. Since that time, the State Juvenile Justice Access Committee (SJJAC) and seven work groups, consisting of various stakeholders, were formed to review target areas of the grant and make recommendations for improvement. These work groups included: (i) Disproportionate Minority Contact, (ii) Initial Detention/Pre-Trial Hearings, (iii) Specialized Training and Education, (iv) Post-Disposition Representation, (v) Transfer Laws, (vi) Access to and Waiver of Counsel, and (vii) Post-Disposition Education. ODS continues to implement strategies identified in the Strategic Plan to advance internal and external improvement efforts. In September 2016, Delaware was awarded the *OJJDP FY 2016 Juvenile Justice: Enhancing Youth Access to Justice State Improvement Implementation Program*. Below is a summary of the issues identified in the Strategic Plan and updates as to progress and improvements that have been made to date.

## **I. Identified Issues and Areas of Improvement**

1. No Access to Counsel at Initial Appearance/Bail Hearings/Capias Hearings in JP Court and Family Court
2. Video Court Proceedings Limit Access to Counsel and Undercut Zealous Advocacy
3. Waiver of Counsel in Delinquency Proceedings
4. No Specialized Juvenile Defense Practice within ODS
5. Limited Vertical Representation Practice within ODS
6. Limited Direct Supervision of ODS Juvenile Defenders
7. No Specialized, Required Juvenile Specific Training Program for ODS Juvenile Defenders

8. No Practice Standards or Guidelines for Representing Children
9. Limited Contact with Child Clients Post-Disposition
10. Limited Access to Post-Disposition Representation of Children in Expungement Proceedings
11. Limited Access to Post-Disposition Representation and Advocacy in Educational Proceedings
12. Limited, Unequal Diversion Programs
13. Juvenile Data Collection

## **II. Identified Strategies for Sustainable Improvement and Updates**

### **1. Deem Children Automatically Eligible for Counsel by Statute**

#### **\*UPDATE\***

During the 2016 Legislative Session, Delaware codified a child's right to counsel in delinquency proceedings in House Bill No. 382. As a result, all children are automatically eligible for legal representation in delinquency proceedings.

### **2. Provide Children with Access to Counsel at Initial Appearance/Bail Hearings/Capias Hearings**

#### **\*UPDATE\***

ODS strives to provide counsel to all children at initial appearance, bail, and capias hearings in the Justice of the Peace Court (JP Court) and the Family Court. However, currently, ODS lacks the necessary resources to provide representation for youth at all of these hearings, particularly in the JP Court. Through the Initial Detention/Pre-Trial Workgroup, ODS continues to review and identify practices that can enhance representation and access to counsel in these courts. In February 2018, Family Court implemented specific bail hearing times in each county so that ODS attorneys can provide representation to children at all capias return and initial appearances in that Court.

### **3. Bail Hearings Should be Conducted by In-Person Hearings**

**\*UPDATE\***

In February 2018, Family Court began conducting juvenile bail review hearings for all detained youth in-person statewide. The Department of Children, Youth and Their Families (DSCYF) now transports detained children to Family Court for these hearings. Previously, these hearings were conducted via video with the child and attorney at a juvenile detention center.

Similarly, Family Court declared that all *capias* return and initial appearances are to be conducted in person and, not, by video. Family Court is in the process of finalizing this procedure with law enforcement and full implementation is expected statewide by July 1, 2018.

**4. Create a Work Group to Review Juvenile Bail Statutes, Process, and Procedure**

**\*UPDATE\***

The Initial Detention/Pre-Trial Workgroup continues to review current bail and pre-trial procedures in the Delaware JP Court and Family Court. This group is also working with the University of Delaware to collect data regarding pre-trial detention of children. A separate committee, through the Juvenile Justice Advisory Group (JJAG), will be reviewing the impact that recently enacted and proposed legislative changes to the adult bail statutes will have on children and determine what changes are needed to be made to the juvenile bail statutes.

**5. Adopt a Court Rule Specific to Juvenile Waiver of Counsel that Imposes Restrictions on Wavier of Counsel for Children in Delinquency Court**

**\*UPDATE\***

Through its work, the Access to & Waiver of Counsel Workgroup recommended that the Family Court change its rule governing juvenile waiver of counsel. In January 2017, the Family Court adopted Criminal Rule 44.1 which limits juvenile waiver of counsel. In July 2017, Rule 44.1 and the right to counsel in delinquency proceedings were codified by House Bill No.6 (HB 6). Under HB 6, a

child's right to waive counsel is extremely limited and, in circumstances where the child may waive counsel, the child is required to consult with an attorney prior to entering the waiver.

6. **Agency Structure and Policies Should be Modified to Decrease Unnecessary Hurdles to Access to Counsel**

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ODS continues to review policies and practices that impact a child's ability to access counsel. ODS conducts intake interviews at all courthouses across Delaware to ensure accessible representation for children. ODS works closely with community organizations to make children aware of their right to counsel prior to appearing in court and to educate children and their families about the juvenile justice system and a child's rights. ODS regularly meets with community partners to discuss creative strategies to engage with children across Delaware.

7. **Recognize Indigent Juvenile Defense as a Specialized Practice Area Within ODS and Systemically through Education, Training, Resources, Structural Changes, and Leadership Support**

\*UPDATE\*

ODS recognizes juvenile defense as a specialized area of practice that is headed by a Chief Juvenile Defender. ODS had adopted and implemented a juvenile specific training curriculum, the Juvenile Training Immersion Program (JTIP), for its juvenile defenders. ODS also provides juvenile specific presentations to further systemically educate its juvenile defenders and other stakeholders.

**8. Change ODS Infrastructure and Enhance Direct/Indirect Supervision**

**a. PDO Division**

\*UPDATE\*

In 2017, the PDO division added data fields to the PDO Database to enhance casework monitoring. The database can track all case action including client contact and filings such as motions and appeals. A “Post-Disposition” field was also added to the database so that all actions related to post-disposition practice can be maintained.

**b. OCC Division**

\*UPDATE\*

Kent and Sussex counties have managing attorneys to oversee juvenile defense practice. Monthly meetings with PDO and OCC juvenile managing attorneys, the Chief Juvenile Defender, the Chief of Legal Services, the Chief Conflicts Counsel, and the Director of Training and Education occur to ensure continuity in the juvenile defense practice. With managing attorneys in place in Kent and Sussex counties, OCC has better first-hand knowledge of needs in those counties. The managing attorneys are able to observe Family Court proceedings and provide assistance where needed.

**9. Implement Vertical Representation**

\*UPDATE\*

In May 2017, all ODS juvenile defenders statewide began to provide vertical representation to their clients. Juvenile defenders in New Castle County PDO, including the one grant funded position, have exclusively juvenile caseloads. In Kent County, one grant funded PDO juvenile defender has an exclusively juvenile caseload.

ODS continues to work to have all juvenile defenders have exclusively juvenile caseloads.

10. **Implement Specialized, Mandatory Training and Education Curriculum for Juvenile Defenders**

\*UPDATE\*

ODS has fully implemented the Juvenile Training Immersion Program (JTIP), created by the National Juvenile Defender Center (NJDC), as its juvenile defender curriculum. Quarterly JTIP trainings are offered for all juvenile defenders. In July 2017, five (5) additional juvenile defenders (three from PDO and two from OCC) became certified JTIP trainers.

Through the grant, ODS was also able to send defenders to national and local juvenile specific conferences. Four (4) attorneys from ODS attended the 2016 NJDC Leadership Summit and five (5) attorneys attended the same training in 2017. One (1) attorney attended the National Legal Aid and Defender Appellate Training- Juvenile Track in 2017 and two attorneys attended the same training in 2018. ODS has sent several attorneys to the week-long JTIP Summer Academy. ODS also provides other programs to its juvenile defenders to educate them on various aspects of the juvenile justice system. Finally, ODS also provides training that are available to all juvenile justice stakeholders.

11. **Draft and Implement Juvenile Defender Guidelines**

\*UPDATE\*

The Director of Training and Education at ODS, along with the grant funded Juvenile Justice Policy Specialist, continue to research and develop Delaware specific juvenile defense standards.

12. **Assist with Specialized Training and Education for Juvenile Justice Stakeholders and Enhance Community Engagement**

\*UPDATE\*

In October 2017, ODS, with the Criminal Justice Council (CJC), hosted the Second Annual Delaware Juvenile Justice Summit. The multi-disciplinary program included national panelists and

provided training on various juvenile specific topics. The summit had approximately 200 attendees. A half-day multi-stakeholder training at Delaware Law School is planned for next month. ODS' Juvenile Justice Policy Specialist and the grant funded Post Disposition/Expungement Coordinator also work with community partners to assist justice involved children. Through their work, ODS continues to educate children and their families about its services, court proceedings, and various post-disposition issues, including expungement. ODS continues to partner with non-profits to engage the community and better serve children. Specifically, ODS has tabled, presented, and engaged with approximately 35 community organizations.

13. **Enhance Access to Post-Disposition Counsel Within ODS and through Sustainable Partnerships in the Legal Community**

\*UPDATE\*

Through the hiring of the grant funded Post-Disposition/Expungement Coordinator in May 2017, ODS provides ongoing post-disposition representation to children in all Delaware secured facilities. The Post-Disposition/Expungement Coordinator advocates for a child's educational needs, addresses issues related re-entry, and provides representation in any matters related to the child's disposition. ODS also recruited and trained law students from the Delaware Law School to assist with post-disposition work. In sum, this work has resulted in ensuring that children have continuing advocacy after they leave the courtroom. Specifically, these efforts have resulted in multiple post-disposition motions being filed. Internal advocacy efforts have ensured that children are being timely released and engaging in appropriate programming. Further, these advocacy efforts have resulted in registration for standardized tests, assistance with housing, timely enrollment in college, appointments with mental health professionals, and referrals to alternative reentry programs. Through this representation, ODS is able to assist a child with many, if not all, of their re-entry needs through advocacy, referrals, and partnerships.



ODS has also cultivated relationships with several Delaware law firms to assist in post-disposition representation. Firms have dedicated their time to volunteer at expungement clinics and/or work with children on expungement petitions. ODS continues this outreach to local law firms and holds expungement volunteer attorney trainings in an effort to grow these resources.

**14. Ongoing, Post-Disposition Contact by Juvenile Defenders**

\*UPDATE\*

Since May 2017, all children at Delaware secured facilities have met regularly with an attorney or law student intern. A formalized law student internship program with the Delaware Law School was reinstated in September 2017. The interns work in collaboration with the Expungement/Post-Disposition Coordinator to address any concerns a child may have and take appropriate action. The Expungement/Post-Disposition Coordinator continues to work with many of the children once they have left the facilities to address ongoing needs in the community. This continued communication has resulted in the scheduling of educational reentry meetings, meetings with probation, assistance with housing, and securing financial aid through FAFSA.

**15. Enhance Access to Counsel in Expungement Proceedings**

\*UPDATE\*

**a. Statewide Expungement Clinics**

Since the commencement of the Grant, several large expungement clinics have been held statewide. Through these clinics, approximately 175 expungement petitions have been filed. In January 2018, an “expungement week” was held in partnership with the City of Wilmington. This project resulted in the filing of approximately 75 expungement petitions and interaction with over 100

community members. In addition, ODS has worked with community partners who raised funds to pay for the necessary records for those who could otherwise not afford to apply for expungement.

**b. Network of Pro Bono Attorneys**

Volunteer attorneys, across all areas of legal specialization, dedicate their time to help children draft and file expungement petitions. The Post-Disposition/Expungement Coordinator frequently schedules in-person meetings and trainings with attorneys who are seeking to donate their time and services to children in need of an expungement. Approximately, fifty (50) pro bono attorneys are trained in juvenile expungements. This network of attorneys participates in juvenile expungement clinics and accepts *pro bono* expungement case assignments. This network is expected to grow as several private law firms continue to show increased interest in juvenile justice.

**16. Form an Exploratory Committee to Improve Access to Representation in Education Proceedings**

\*UPDATE\*

In Fall 2017, the Post-Disposition Education Workgroup was created and is co-chaired by the Post-Disposition/Expungement Coordinator and Juvenile Justice Policy Specialist. Members of the workgroup have been selected and began meeting in November 2017. The group seeks to begin its work by re-examining a 2016 Memorandum of Understanding that was drafted by key stakeholders across school districts, the Department of Education, and DSCYF. Additionally, the group seeks to develop reference guides for children and families involved in disciplinary action based on alleged criminal conduct.

17. **Provide Continued Advocacy and Training on Holistic Defense and Collateral Consequences and Pursue Additional Resources to Enhance Holistic Defense Within ODS**

\*UPDATE\*

ODS works with its community partners to facilitate and incorporate holistic defense in its everyday practice. ODS is collaborating with familiar and new community organizations to facilitate better ways to serve justice involved children. ODS has presented at various speaking engagements on the juvenile justice system and expungement efforts. ODS has also partnered with service providers, such as Brandywine Counseling & Community Services (“BCCS”) and the Department of Health and Social Services’ Community Partner Unit (“DHSS”), to create referral programs for children and their families. ODS is confident that a child’s access to programs facilitated by these agencies will generate proactive change in the communities throughout Delaware.

18. **Review Delaware’s Statutory Scheme**

\*UPDATE\*

ODS continues to educate the General Assembly about needed changes related to the arrest, prosecution, and sentencing of children. During the 2017 Legislative Session, four (4) juvenile specific bills were signed into law. Senate Bill No. 54 (SB 54) expanded eligibility for discretionary expungement by allowing additional felony offense adjudications to be expunged. The bill also expanded discretionary expungement eligibility to include records containing multiple felony, misdemeanor or violation adjudications. House Bill No. 6 (HB 6) limited a child’s ability to waive the right to counsel and codified a child’s right to counsel in criminal contempt proceedings. House Bill No. 8 (HB 8) expanded eligibility for the civil citation program. House Bill 9 (HB 9) expanded the Superior Court’s discretion to transfer certain felony offenses back to juvenile court for disposition. Prior to HB 9, certain offenses were subject to mandatory transfer to adult court if the child was 16 or older.

### 19. **Expand Juvenile Data Collection**

\*UPDATE\*

ODS continues to expand its juvenile data collection efforts. ODS, through the CJC, is working with the University of Delaware to collect data related to bail disposition and access to counsel. ODS also continues to add new juvenile related fields to the OCC and PDO database to collect internal data.

### 20. **Expand Diversion Programs**

\*UPDATE\*

ODS continues advocate for expansion of the Civil Citation Program which is an alternative to arrest. ODS is a member of the Civil Citation Steering Committee. During the 2017 Legislative Session, House Bill No. 8 (HB 8) was passed. HB 8 added the charge of Possession of Drug Paraphernalia to the list of offenses eligible for civil citation. HB 8 also allows children to enter the program for a second time provided certain criteria are met, including an 18 month gap between eligible offenses.

## **III. Conclusion**

ODS continues to strive to implement the recommendations outlined in its 2016 Strategic Plan as well as those noted in the 2017 NJDC report: *Delaware: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings*. In 2018, ODS will advocate for further improvements around youth transfer to adult court, youth housed in adult jail facilities, monetary bail, civil citation and other diversionary programs, expungement, records confidentiality, recording of interrogations, minimum mandatory sentencing, and the use of juvenile adjudications in adult sentencing. ODS will continue to promote education on best practices for all juvenile justice partners and specialized training for juvenile defenders.

ODS is confident that its efforts, along with its partners, such as the CJC, will improve the quality and access to juvenile defense and the juvenile justice system overall in Delaware. ODS' goal is to make Delaware a model state for juvenile defense and juvenile justice improvement that other jurisdictions can replicate.