

# **Delaware Office of Defense Services Indigent Juvenile Defense Strategic Plan**

## ***UPDATE 9/19***

In 2015, Delaware was awarded the *FY 2015 Smart on Juvenile Justice: Enhancing Youth Access to Justice Initiative* grant. As a result of this grant, the Delaware Office of Defense Services (“ODS”) drafted a Strategic Plan for the improvement of indigent juvenile defense delivery. Since that time, the Smart on Juvenile Justice Access Committee (“SJJAC”) and seven work groups, consisting of various stakeholders, was formed to review target areas of the grant and make recommendations for reform. 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.

Throughout the grant period, with the collaboration of other stakeholders, ODS has worked to implement strategies identified in the Strategic Plan to support reform efforts both internal to its office as well as on a greater policy and systemic level. As the grant period comes to a close on September 30, 2019, Delaware has achieved significant improvements and reform which have led to better representation, treatment, and outcomes for children in the delinquency system. Our successes have been both internal to ODS as well as external in systemic, policy, and legislative changes that have occurred. During the grant period, we have addressed numerous gaps in the delinquency system and created policies and practices that have resulted in the overall better representation of children. The promise of competent counsel advocating on behalf of children is no longer hollow. Children have access to qualified, well-trained attorneys who are devoted to juvenile practice from initial appearance in Family Court through post-disposition. We have also made recommendations that have resulted in broad, multi-agency policy and systemic changes. Education and research that have occurred during the grant period have also resulted in legislative changes that have been supported by multiple stakeholders.

Most notably, the goals that we have achieved through the grant period are fully sustainable. Through the grant, ODS was able to fund four (4) contract attorney positions (two (2) full time juvenile defenders, a Expungement/Post-Disposition Coordinator, and a Juvenile Justice Policy Specialist). Recognizing the critical need for these positions, as of FY20, these positions will be assumed by the ODS state budget as full-time positions. Through the grant, we have been able to not only address gaps in services and needed improvements, but we have also been able to set the stage for future reform in juvenile justice. The below summary outlines the issues and areas of improvement that we identified in the Strategic Plan and how we have addressed these issues during the grant period and met our goals.

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

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 Children 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 Reform and Updates**

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

During the 2015-16 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 all delinquency proceedings in the Family Court. Although this was already the practice ODS, regardless of changes in administration or policy, all children are now statutorily guaranteed the right to counsel in delinquency proceedings.

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

ODS now provides counsel to all children at initial appearance, bail, and capias hearings in the Family Court. During the grant period, a new procedure was put in place to ensure that children have counsel at these hearings. Family Court now holds these hearings at three (3) specific times during the day with ODS present at every hearing. Children must be brought to Family Court for these hearings during the business hours of Family Court. The Justice of the Peace Court ("JP Court") will only hear initial appearance/bail hearings when the Family Court is closed. Although ODS lacks the necessary resources to provide representation for children for these hearings at the JP Court currently, we continue to review how we can expand our resources to provide representation. Through the new Family Court process, however, ODS ensures that all detained children are represented at a bail review hearing in the Family Court which occurs on the next business day following the JP Court hearing. As a result of these systemic changes in procedure, children are represented in these critical proceedings in the Family Court.

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

Due to ODS' efforts and collaboration with other stakeholders, such as the Department of Children, Youth and Their Families ("DSCYF") and the Family Court, DSCYF transports children

housed at detention centers pre-trial for in-person bail review hearings at the Family Court. The police agencies are also required to transport every child to Family Court during normal business hours for initial appearance, bail or capias hearings unless exceptional circumstances exist.

As a result of this collaboration and new policy, video hearings are no longer used unless an exceptional circumstance exists. By instituting this change, we now hold hearings statewide in accordance with best practices and children are provided better representation that can result in better outcomes.

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

The Initial Detention/Pre-Trial Workgroup (“Workgroup”) reviewed current bail and pre-trial procedures in the Delaware JP Court and Family Court. With the assistance of Daniel J. O’Connell, Ph.D, Senior Scientist, Center for Drug and Health Studies, and Assistant Professor University of Delaware, Department of Sociology and Criminal Justice and Andrew R. Cohen, M.B.A., Manager of Research and Statistics, Division of Management Support Services, the Workgroup reviewed calendar year 2017 detention data which indicated that on average the JP Court detained more youth at initial appearance than Family Court. In addition, a review of detained youth with short term stays of 1-3 days indicated that most youth (97.7%) were released to the community or residential alternative to detention after a subsequent bail review hearing was conducted, indicating that the initial detention was not necessary.

Independent of the grant, the state’s Juvenile Justice Advisory Group (“JJAG”) established a Juvenile Bail Subcommittee (“Subcommittee”) to review the impact that recently enacted and proposed legislative changes to the adult bail statutes will have on children. Most pressing is a proposed constitutional amendment that would allow preventative detention for additional crimes and circumstances. If adopted, juvenile bail procedures will have to be revised.

Additionally, in 2019, new court rules affecting adult bail were implemented which moved away from a reliance on monetary bail and shifted emphasis to risk-based empirical analysis. The Workgroup was subsumed into this Subcommittee; however, the data gathered by the Workgroup was used to guide discussions on needed areas of improvement.

The changes to the adult bail statutes and rules have led to the realization that the current juvenile Risk Assessment Tool (“RAI”) is in need of change, as any modification to the juvenile bail statutes and rules must be accompanied by a reliable RAI. The Subcommittee is currently seeking proposals to study, revise and implement a better RAI. We continue to review ways ODS can advocate for positive change, such as providing additional representation at all initial bail hearings and drafting statutes and rules that reflect best practices.

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

During the grand period, 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 in House Bill No. 6 (“HB 6”). Under HB 6, a child’s right to waive counsel is extremely limited: a child may not waive not counsel if the child is: (i) accused of a felony, (ii) in the custody of the Division of Family Services, (iii) under the age of 16, or (iv) when the victim of the alleged delinquent act is a family member or guardian or where the family member or guardian has an interest adverse to the child. Even when waiver is allowable, the child must consult with an attorney prior to a waiver colloquy on the record. Under these changes, a balance has been struck between ensuring that children have access to counsel in all proceedings and respecting the right to waive counsel under limited circumstances.

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

ODS reviewed policies and practices that impact a child's ability to access counsel and made changes to enhance access to counsel through education, policy and staff changes, and community engagement. ODS staff conduct intake interviews for legal representation at all courthouses in Delaware to ensure accessible representation for children. Through the Expungement/Post-Disposition Coordinator, children now have an advocate long after their legal case is resolved which has resulted in on-going representation in both legal and collateral areas. ODS management also routinely meets to discuss any issues that arise in juvenile practice, including those that impact access to counsel, and make changes as necessary.

In addition, ODS worked closely with community organizations to ensure that children are aware of the right to counsel prior to appearing in court and educating children and their families on the juvenile justice system and children's rights. ODS continues to meet on a regular basis with community partners to discuss creative strategies to engage with children throughout Delaware.

Through both the internal changes and the engagement in the community, ODS has increased awareness of and access to counsel for children involved in the delinquency system. ODS will continue to review its internal policies and procedures, as well as grow its community engagement efforts, to ensure that children have unfettered access to counsel at all stages of the delinquency process.

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

ODS recognizes its juvenile practice as a specialized unit that is headed by a Chief Juvenile Defender. ODS had adopted and implemented a juvenile specific training curriculum for its juvenile defenders with ongoing training that is responsive to the needs of these attorneys. ODS provides juvenile specific training and presentations to further educate its juvenile defenders. All ODS juvenile

defenders can now work with the Expungement/Post-Disposition Coordinator on collateral and legal issues that arise after the delinquency case is closed. Finally, ODS leadership continues to make juvenile practice a priority by supporting these initiatives and requesting state funding for full time positions.

Through the grant, ODS was able to implement all of these initiatives which are both supported by ODS leadership and sustainable within the current ODS structure.

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

Through the grant period, a variety of internal changes occurred to increase supervision and support of juvenile defenders. ODS has implemented monthly juvenile defense management meetings to discuss issues that arise statewide in juvenile practice. These monthly meetings with the Chief Juvenile Defender, the Chief Conflicts Counsel, PDO and OCC juvenile managing attorneys, the Chief of Legal Services, and the Director of Training and Education ensure continuity in the juvenile defense practice. In 2017, the PDO division added data fields to the PDO Database to enhance casework monitoring. The database can track voluminous information such as client contact and court filings. The database also includes a “Post-Disposition” field, so that all actions related to post-disposition practice can be monitored. In the OCC division, New Castle, Kent and Sussex counties have managing attorneys who oversee all aspects of juvenile defense. All OCC attorneys who are awarded with Family Court contracts are experienced juvenile defenders with more serious cases being assigned to the most experienced attorneys. With managing attorneys in all three counties, OCC has better first-hand knowledge of the needs of juvenile defenders in each county. The managing attorneys can also observe Family Court proceedings and provide representation for children when needed.

#### **9. Implement Vertical Representation**

As of May 2017, all ODS juvenile defenders vertically represent each of their clients statewide. Currently, juvenile defenders in New Castle County have an exclusive juvenile case load. In Kent County, one attorney is exclusively devoted to juvenile cases while the other two attorneys split their

caseloads between adult and juvenile cases. In Sussex County, two juvenile defenders still handle both adult and juvenile cases. ODS continues to strive to have all juvenile attorneys statewide exclusively represent children. As a result of the positions added by the grant, which have now become full-time positions as part of the ODS budget, ODS is able to meet and sustain this goal.

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

ODS has fully implemented the Juvenile Training Immersion Program (“JTIP”), created by the National Juvenile Defender Center (“NJDC”), as its juvenile defender curriculum. 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. With the increased number of certified trainers, ODS can provide ongoing, juvenile specific training to all of its juvenile defenders.

Through the grant, ODS was able to send juvenile defenders to national and local juvenile specific conferences including the Juvenile Defense Leadership Summit and the Summer Academy presented by NJDC, an appellate training, and juvenile specific and JTIP trainings offered in New Jersey, and Maryland. ODS, with the Criminal Justice Council (“CJC”), also hosted multi-disciplinary programs annually throughout the grant period. Day long, multi-stakeholder trainings, which included national and local panelists on various juvenile specific topics were held annually. ODS has also held meetings or provided training to various state agencies and non-profit, community organizations to learn about probation, re-entry, and other services available to children

Through the training curriculum and educational opportunities, ODS and other stakeholders can remain on the forefront of new issues and best practices in juvenile justice. We have been able to provide juvenile specific education to all stakeholders as well as implement a juvenile defense curriculum for all ODS defenders.



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

Juvenile specific defense guidelines have been drafted and implemented so that all ODS defenders can understand their role and responsibilities when representing children. These guidelines will be disseminated to all juvenile defenders and training provided. The guidelines will continue to be reviewed and updated to address any changes in the law and best practices.

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

ODS' Juvenile Justice Policy Specialist and Post Disposition/Expungement Coordinator have worked with numerous community partners to assist justice involved children. ODS has educated children and their families about its services, court proceedings, and various post-disposition issues, including expungement. ODS has created partnerships with multiple non-profits and businesses to engage the community and better serve children. Specifically, ODS has engaged with community organizations such as Reeds Refuge, the Wilmington Public Library, Widener University-Delaware Law School, Jewish Family Services-Future Net, Jobs for Delaware Graduates, the Office of the Child Advocate, Wilmington Green Box, West End Neighborhood House-Bright Spots Farms/GED program, Wilmington Boys and Girls Clubs, Penn Cinema, Project New Start, the Challenge Program, and Child, Inc. ODS has on-going partnerships with several private law firms to provide *pro bono* representation and host clinics for juvenile expungement. Community organizations, such as the Delaware Center for Justice and the Southern Delaware Alliance for Racial Justice have raised funds to cover fees associated with expungement.

Prior to implementation of the grant, ODS did not have relationships with many of these organizations. Through the grant and the community engagement goal, ODS has created sustainable partnerships to benefit the children it serves with current and future projects.

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

Through the work of the Expungement/Post-Disposition Coordinator, ODS provides ongoing post-disposition representation to children in all Delaware secured facilities. The Expungement/Post-Disposition 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. The Expungement/Post-Disposition Coordinator works with clients during their time in placement and when they are returned to the community. Her work has resulted in assistance with finding housing, applying to and being accepted at college, securing jobs, assistance with documents such as financial aid, drafting resumes, and educational advocacy, including placement back in school. The Expungement/Post-Disposition Coordinator drafts, files and litigates all post-disposition matters. During the grant period, ODS recruited and trained law students at Widener University-Delaware Law School to visit with these youth. These students work with counsel to ensure a child's legal needs are met. ODS, through the Expungement/Post-Disposition Coordinator, continues to partner with several Delaware law firms to ensure post-disposition representation. Numerous firms have dedicated their time to volunteer at expungement clinics and/or work with children on discretionary expungement petitions.

The Expungement/Post-Disposition Coordinator has created a sustainable and replicable model for post-disposition, holistic representation of children. Her work has resulted in filling a significant gap in ODS' representation of children as well as ensuring that children have a voice long after they leave the courtroom. As result of this work, post-disposition motions are routinely filed on behalf of children. Internal advocacy efforts, with staff at various agencies, has ensured that children are being timely released and engaging in appropriate programming. These advocacy efforts have further resulted in registration for standardized tests, timely enrollment in college, appointments with mental health professionals, coordinating counseling, securing employment, completion of community service, and

referrals to alternative re-entry programs. In addition, the Expungement/Post-Disposition Coordinator has created ongoing partnerships with local law firms who are engaged and committed to providing *pro bono* representation to children and forged many relationships with community organizations that can assist youth to succeed in our community.

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

As a result of the grant, all children at Delaware secured facilities meet regularly with an attorney or law student intern. A formalized law student internship program with the Widener University - Delaware Law School was finalized 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 works with children once they have left the facilities to address ongoing needs in the community. This continued communication has resulted in the scheduling and execution of educational reentry meetings, securing financial aid through FAFSA for a child enrolling in community college, assistance with job searching and placement, and facilitation of the successful completion of probation requirements. The ongoing communication of the Expungement/Post-Disposition Coordinator and the network of law student interns has created a structure to timely respond to the needs of child clients and assist with various collateral areas, such as education and employment, which are critical to success long after the legal case is resolved.

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

##### **a. Statewide Expungement Clinics & Network of Pro Bono Attorneys**

Throughout the grant period, over 20 expungement clinics have been held statewide. Since the onboarding of the Expungement/Post-Disposition Coordinator, all recruitment efforts for the clinics, as well as most aspects of clinic planning and execution, have been performed by the Expungement/Post-Disposition Coordinator. Through these clinics, approximately 525 mandatory expungements petitions

have been filed. Volunteer attorneys, across all areas of legal specialization, dedicate their time to help children draft and file expungement petitions. The Expungement/Post-Disposition Coordinator provides support and trainings to the *pro bono* volunteers. Over 50 *pro bono* attorneys were trained in juvenile expungements during the grant period. This network of attorneys participates in juvenile expungement clinics and accepts *pro bono* expungement case assignments. This network has grown as several private, corporate law firms continue to show increased interest in juvenile justice. As a result of the grant, ODS has created sustainable partnerships to continue to support statewide expungement efforts and *pro bono* representation.

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

The Post-Disposition Education Workgroup, created in Fall 2017, is co-chaired by the Expungement/Post-Disposition Coordinator and Juvenile Justice Policy Specialist. This group began meeting in November 2017. The group's initial goals were to re-examine a 2016 Memorandum of Understanding that was drafted by key stakeholders across school districts, the Department of Education, and DSCYF and to develop reference guides for children and families involved in disciplinary action based on alleged criminal conduct by the district. Additionally, the group developed a reference guide for children and families involved in disciplinary action based on alleged criminal conduct by the school district. This resource is an educational re-entry guide that will help children and their families navigate the education process while detained. The resource outlines a child's educational rights and how to effectively advocate for these rights while detained and summarizes the child's rights and responsibilities regarding education upon re-entry into the community.

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

ODS works with its community partners to facilitate and incorporate holistic defense in its everyday practice. ODS has collaborated with familiar and new community organizations to facilitate better ways to serve children and the State. Specifically, ODS presented at various speaking engagements on the juvenile justice system and expungement efforts. Additionally, ODS partnered with 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. These partnerships have generated proactive change in the communities throughout Delaware.

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

Through the work completed under the grant, ODS has been given the tools to educate legislators to effect legislative change. During the grant period, the following legislation was passed that impacts the prosecution, sentencing, and representation of children in the delinquency and criminal systems.

- limiting minimum/mandatory sentencing
- limiting transfer to adult court
- expanding juvenile expungement
- codifying a child’s right to counsel in delinquency proceedings
- expanding eligibility for the civil citation program
- allowing judicial discretion for transfer of certain crimes
- making certain crimes civil violations
- determining jurisdiction based on age at commission of offense and not age of arrest
- eliminating suspension of drivers license for expulsion and truancy
- giving great discretion to local school boards regarding suspension for possession of a deadly weapon in a safe school zone

Areas in need of improvement were identified by the SJJAC and explored at trainings throughout the grant period raising awareness of these topics. The research, education, and changes to policy and procedure have supported broad legislative initiatives. Through the collaborative efforts of the grant, various stakeholders supported this legislation that recognized best practices in juvenile justice.

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

ODS has expanded its juvenile data collection efforts. ODS, through the CJC, worked the University of Delaware to review bail disposition data in JP Court and Family Court, and collect data related to bail disposition and access to counsel.

## **20. Expand Diversion Programs**

The need for expansion of diversionary programming, in general, and the Juvenile Civil Citation program, specifically, was recommended by the SJJAC Disproportionate Minority Contact Workgroup.

ODS and other partners advocated for legislation to expand the Juvenile Civil Citation Program which is an alternative to arrest. In 2017, House Bill No. 8 (“HB 8”) was passed which expanded the list of offenses eligible for civil citation and allowed children to enter the program for a second time, provided certain criteria are met. In 2018, House Bill No. 442 (“HB 442”) was passed which expanded civil citation to all misdemeanor offenses with very limited exceptions. It also shortened the “look back” time period from 18 months to 12 months for second offenses. This legislation took effect on July 1, 2019. As a result, nearly all children accused of a misdemeanor offense are eligible for civil citation for first and second offenses which completely divert children from entry into the juvenile justice system.

Children referred to civil citation receive a risk and needs screening and referrals to appropriate services. They are typically required to complete community service hours, write a letter of apology, or a community impact statement. Upon successful completion, children are discharged with no arrest and, most importantly, no record.