<u>National Overview of Appointment of Counsel, Indigence, Waiver of</u> Counsel, and Defense Delivery Systems in Juvenile Delinquency Proceedings

Appointment of Counsel and Indigence Determinations:

Court appointments of counsel can be mandatory or automatic, at the request of parties, or at the discretion of the judge or magistrate. Even where appointment is automatic or mandatory, most states require that the juvenile qualify as indigent prior to most appointments of counsel.

- ➤ 38 states and the District of Columbia will automatically appoint counsel or are required to provide counsel at various stages or in certain cases.
- ➤ Of the 38 states with statutory provisions for the automatic appointment of counsel, 17 do not take into account indigence when counsel is appointed; instead conditioning appointment only on whether the juvenile has retained private counsel or where waiver is allowed, has waived his or her right to counsel.
- ➤ New Hampshire, South Carolina, Tennessee, and Virginia automatically appoint counsel for juveniles at detention hearings.
- ➤ Alabama, Arizona, Arkansas, Georgia, and Minnesota automatically appoint counsel for juveniles facing out-of-home placement or commitment.
- ➤ Only 12 states, including Colorado, require the juvenile and/or the parent affirmatively request the court appoint counsel, in addition to determining indigence, requiring the juvenile to "opt-in" instead of automatically receiving representation *unless and until* there is a valid waiver of counsel.
- ➤ Indiana, Michigan, North Carolina, New York, Pennsylvania, Wisconsin, and the District of Columbia have no requirement that the juvenile be determined indigent for the court to appoint state-funded counsel and every child, regardless of the parent/guardian's income and assets, will be assigned counsel.
- ➤ California, Kentucky, Louisiana, Montana, South Carolina (for detention hearings only), and Virginia-have an <u>initial presumption of indigence in statute or rule</u> so that state-funded counsel will be appointed before any indigence determination has been done.

Waiver of Counsel:

States vary from no statutory provisions or court rules regarding waiver of counsel, to establish case law and specific rules on who can waive and when. The trend has been to establish statutes and court rules that protect children's access to representation and only 20 states, including Colorado, have no safeguards in statute or court rule on waiver of counsel in juvenile delinquency proceedings. A court rule pending in **Indiana** will bring this number to 19.

- ➤ 20 states, including the District of Columbia, have statutory protections that limit a juvenile's ability to waive their right to counsel.
- ➤ **Idaho**, **Kentucky**, and **Louisiana** do not allow juveniles charged with a felony or a sex offense to waive counsel.
- Arkansas, Georgia, Idaho, Kentucky, Louisiana, Montana, and Ohio do not allow juveniles facing commitment to waive their right to counsel.
- In the District of Columbia, Illinois, Iowa, Mississippi, North Carolina, New Mexico, and New York juveniles are represented by counsel at every stage of proceedings and cannot waive their right to counsel under any circumstances. Idaho and Pennsylvania do not allow juveniles under 14 to waive counsel and Wisconsin does not allow those under 15.
- ➤ 11 states-Alaska, Florida, Maryland, Minnesota, New Jersey, South Carolina, Tennessee, Vermont, Virginia, Washington, and Wisconsin-although they don't restrict who can waive counsel, require that <u>any child who indicates they</u> want to waive counsel, consult with an attorney first.

Defense Delivery System:

Juvenile representation falls to either a statewide system, with authority vested in a state agency or a county or city-based system where the state has left indigent defense to the individual counties. Juvenile defender offices, both at the state or county level, exist in at least half of the states and are specialized units responsible for juvenile representation.

- ➤ 6 states, Maryland, Massachusetts, New Jersey, North Carolina, Rhode Island, and Vermont have established State Juvenile Defense Offices responsible for: post-conviction representation; support and training of juvenile attorneys; and/or trail level representation.
- ➤ Alaska, Connecticut, and New Mexico have established juvenile offices in more populated districts. In Iowa, three regional juvenile offices in Des Moines, Waterloo, and Sioux City represent juveniles in all counties across the state.
- ➤ In counties in 15 states, local public defender offices have established juvenile offices or dedicated divisions.
- In Maricopa County, **Arizona**, the Office of the Public Advocate, established in 2008, is an independent juvenile defense office and is responsible for juvenile representation in that county. In **New Orleans**, the Louisiana Center for Children's Rights is a non-profit center that defends youth.
- In **Georgia**, counties with a circuit defender (counties that operate under the statewide program) are required by statute to establish a juvenile division to specialize in representing children.