

How the Public Defender's Office for the 11th Judicial Circuit (PD-11) compares to findings of NJDC Florida Delinquency Assessment Report

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ISSUES IDENTIFIED IN THE NJDC REPORT

Excessive Waiver of Counsel

Unlike almost all Florida counties, in Miami Dade County, judges do not allow children to accept a plea or go to trial without the assistance of an attorney. Each child is either appointed the Public Defender (PD-11) or, if not indigent, parents hire private counsel.

Untimely Appointment of Counsel

This is not a problem in Miami Dade where Public Defender staff and attorneys are present and ready to be appointed and represent each child at the first appearance/detention hearing. PD staff routinely interview detained children at the Juvenile Assessment Center (JAC) or at the detention center *prior* to their first appearance/detention hearing.

Early Representation

PD-11's involvement with children in custody begins very early at the JAC, where it has one staff person during peak weekday hours, and other staff at the detention center conducting client interviews the morning after their arrests and prior to their first appearance in court. Disposition specialists screen records and interview for signs of mental health, mental retardation, trauma, substance abuse, and other possible treatment issues.

PD-11's early screening and interviewing provides its attorneys critical psycho-social, mental health, retardation, substance abuse and family and alternative custodian information within 24 hours of the arrest; thus, the attorneys are able to competently represent the child at his or her first-appearance hearing.

Additional funding would allow PD-11 to assign attorneys or support staff around-the-clock and weekends for client interviews and early family contact.

Zealous Advocacy

Children need access to competent experienced attorneys. PD-11 is considered a model for juvenile defender offices nationwide, according to the study's authors and other legal experts. PD-11 has lead attorneys assigned to every courtroom, with an average of 10 years experience.

Specific defender offices were not named or singled out because the report methodology relied on the anonymity of comments and observations. As the report notes,

“While exemplary and model juvenile defense practices occur across

Florida, the practitioners who spoke with our assessment team uniformly agreed that there is ample room for improvements to the juvenile indigent defense system.”

PD-11 has led the state in challenging the indiscriminate use of chains and shackles on detained children in juvenile court. As a result of its ongoing litigation and advocacy efforts, more than 99% of children in Miami Dade appear in court without chains and shackles. Additionally, other PDO's have filed motions to challenge the practice in the counties. PD-11 has provided training to defenders for engaging in such challenges.

Recently, PD-11 won its challenge of the inexcusable and illegal delays in bringing arrested children to appear in front of a judge within 24 hours of the arrest. Several writs were filed and the Third District Court of appeal issued its decision in early December. (Link)

Another important issue that PD-11 is addressing through the Florida Public Defender Association is the complete lack of informed consent and valid Miranda warnings when children are screened at the Juvenile Assessment Centers. The FPDA has been working with the Department of Juvenile Justice to correct the most glaring problems, but litigation in individual cases is likely inevitable.

Use of experts.

PD-11 makes effective and frequent use of expert witnesses to evaluate its clients as part of the defense preparation. PD-11 has provided training to other PD offices around the state on the effective use of experts in juvenile cases.

Pre-trial practice and depositions.

PD-11 maintains a good practice by filing appropriate pre-trial motions to suppress and other motions and writs. PD-11 routinely schedules and takes depositions, and conducts independent investigations.

Results.

PD-11 is proud to have many trials in juvenile court. While PD-11 ranked 5th in number of juvenile cases statewide, it tried approximately 300 cases, the most in the state. When PD-11 clients are on trial, there are always two assistant public defenders (APDs) trying the case, one of whom is an experienced lead attorney or training attorney assisting and coaching. PD-11 wins more than 50% of its trials in juvenile court.

PD-11 has won numerous writs challenging illegal detentions of our juvenile clients, and have won many juvenile appeals. It filed almost 100 appeals and writs in the last fiscal year.

The juvenile division represents 8% of the juvenile court clients statewide, yet PD-11 clients account for fewer than 6% of all children in the State sentenced to commitment programs, the highest penalty available in juvenile court.

Transfers of juveniles to adult court.

_____ We created our Juvenile Sentencing Advocacy Program (JSAP) to represent children targeted by the State Attorney's Office for transfer to adult court and those actually charged as adults. The direct file unit in our juvenile division currently consists of APDs, each with more than 15 years of adult felony and juvenile experience. Disposition specialists, investigators, interns and a paralegal also assist the unit. PD-11 also has a designated attorney and disposition specialists assisting juveniles in adult court. Since the creation of its JSAP, case transfers to adult court have dropped from almost 1,300 to approximately 400 a year.

Guilty Pleas

In 2005, almost half of PD-11's juvenile cases resulted in dismissal, nolle prosequere, no action or not guilty finding.

As required by professional rules, APDs have to convey prosecutorial plea offers to its juvenile clients. PD-11 has an office policy that requires the APD to inform and recommend to the client that the plea offer should not be accepted before we have had an opportunity to investigate the facts, prepare a defense and adequately inform clients and parents of the potential long-term consequences.

Even when there is a plea, PD-11 works with its disposition specialist to design a more appropriate intervention for the client. For example, every effort is made to keep clients in programs that are located in our county so they can be close to their parents and family, and have a better opportunity to be rehabilitated.

Use of Juvenile Court as a Training Ground for Defenders

The biggest challenge PD-11, as well as all PD offices in Florida's 19 other Judicial Circuits, face is retaining attorneys who on average owe more than \$100,000 in student loans. If the legislature were to significantly increase defender salaries and/or provide loan repayment assistance like other state and federal employees already receive, PD-11 would reduce turnover and reduce its reliance on having a large group of less-experienced attorneys in juvenile court.

In Miami Dade, APDs typically are assigned to juvenile court for 8 months, compared to only 4 months on average for prosecutors. Few APDs are assigned to juvenile court before having practiced for about a year in our county court (misdemeanor) division. In contrast, many prosecutors start in juvenile court. Approximately 10 years ago, PD-11 began assigning a number of experienced APDs to each of the juvenile courtrooms. Today, the eight most experienced juvenile division attorneys have over 100 years combined experience, an average of 12 years as attorneys.

PD-11 has an extensive training program where new attorneys have direct supervision and contact with the lead (experienced) attorneys and the training attorneys, as well as daily staffings, weekly training sessions and seminars. Two full time training attorneys, with more than 30 years courtroom and trial experience, supervise all the juvenile APDs, and specifically

monitor illegal or inappropriate court rulings.

Inadequate Resources and Excessive Caseloads

Yes, PD-11 is understaffed and overworked. To meet national defender caseload standards, our Juvenile Division would need almost 20 additional staff.

Like no other PD office in the state, PD-11 has a disposition services unit staffed by five disposition specialists, with degrees in social work and related experience. PD-11 has one disposition specialist assigned to assist the APDs in each juvenile courtroom. PD-11 recognizes the value of that the early and experienced intervention social workers provide in juvenile court. That why, juvenile is the only division in PD-11 with a high ratio of disposition specialists to attorneys.

PD-11 also has four investigators assigned to its juvenile division to interview clients at the JAC and assist with defense preparation. Juvenile is also the only PD-11 division with such a high investigator to attorney ratio.

Advocacy Beyond the Courtroom

PD-11 is very much involved with the local community to reform the juvenile system through prevention and legislative initiatives. For years, PD-11 has been working to reform laws and processes that have a discriminatory or harmful impact on its clients, including racial profiling, disproportionate number of minority children being arrested and not given diversion programs, and charging juveniles in adult court.

PD-11 is spearheading the effort to ban the indiscriminate use of shackles and chains on children who appear in Florida's juvenile courts; eliminate the illegal release of confidential misdemeanor arrest information by FDLE; reduce outdoor suspensions and school arrests; amend zero tolerance policies; and, provide confidentiality in juvenile cases in Florida.

PD-11 has worked hard to contain the numerous collateral consequences of having a juvenile record, and to expand the ability to seal and expunge through legislation and community education. Next year, it will officially launch a juvenile justice reform initiative.

PD-11 have also advocated for re-establishing checks and balances in the process for prosecutors charging juveniles as adults. Among our proposals:

1. Authorizing adult court judges to determine whether the child is amenable to rehabilitation in juvenile court.
2. Prohibiting children who are incompetent due to mental illness or mental retardation to be prosecuted in adult court.
3. Permitting judges the flexibility to impose prison sentences with parole rather than mandatory life imprisonment for juveniles convicted as adults.

Finally, a series of public dialogues concerning the number of public school children being cycled from the school system to the justice system were held because of PD-11's insistence and work with the Miami Dade County Community Relations Board and other local agencies.

Conclusion

Because of their unique role, defenders are uniquely situated to provide a guiding hand to each child charged with an offense, and to assist the Department of Juvenile Justice, the judge and the prosecution in developing meaningful opportunities to help our young people grow up to be productive contributing members of society. If we are to improve juvenile representation in Florida, we need the Legislature and the Governor to understand the many young lives that are being wasted by under funding the Public Defender Offices.