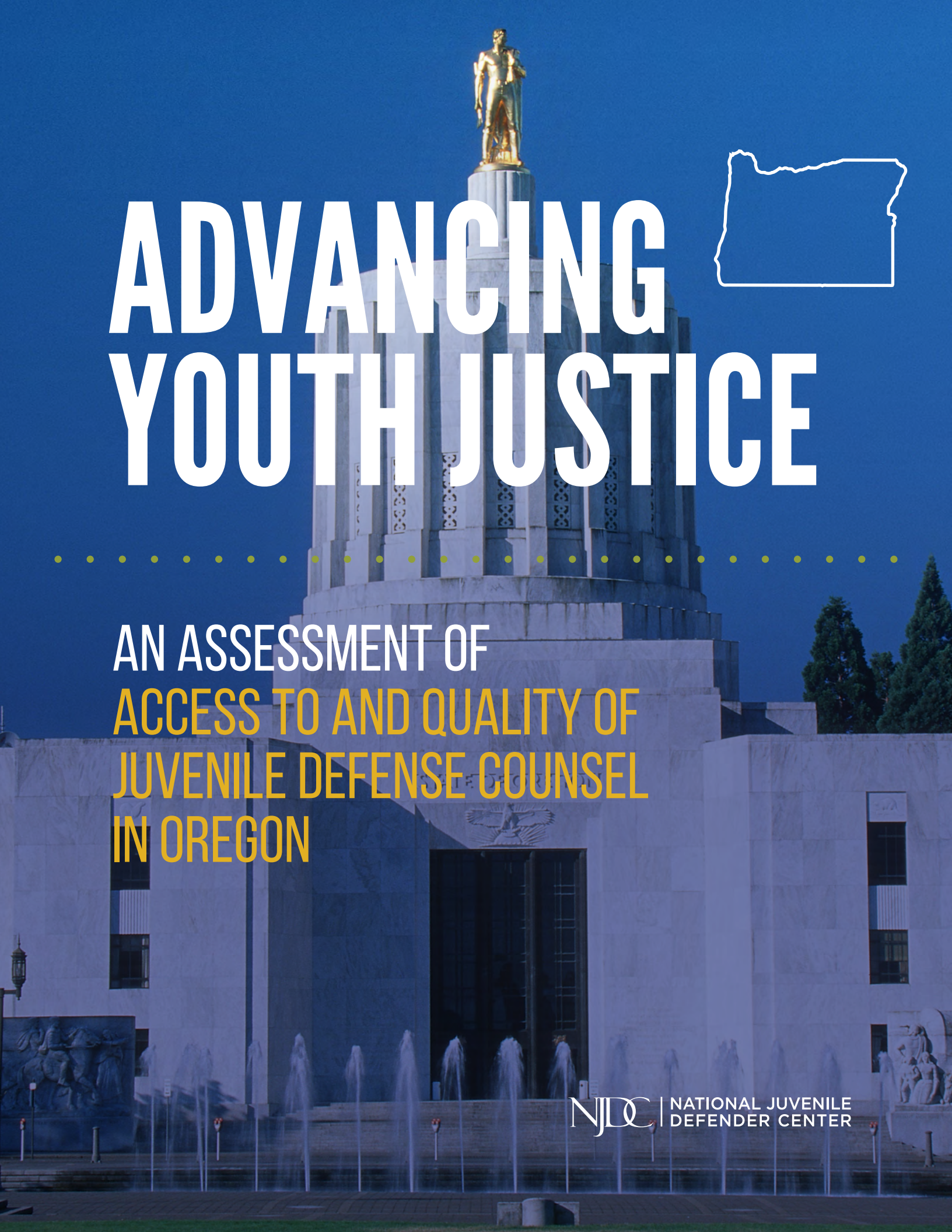

ADVANCING YOUTH JUSTICE

AN ASSESSMENT OF ACCESS TO AND QUALITY OF JUVENILE DEFENSE COUNSEL IN OREGON

NJDC | NATIONAL JUVENILE DEFENDER CENTER

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A report of the National Juvenile Defender Center

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Additionally, we appreciate the behind-the-scenes support of the National Juvenile Defender Center staff, consultants, and law clerks who coordinated site visits and logistics, prepared briefing materials, collected and analyzed data, compiled and synthesized notes, and assisted in the production of this report. We earnestly hope the assessment report provides the many dedicated juvenile justice professionals in Oregon with a critical resource for change and leads stakeholders to both build upon existing strengths and vigorously address the challenges within the Oregon juvenile defense system.

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EXECUTIVE SUMMARY

"Effective juvenile defense reform begins with championing the due process rights of children."[1]

More than 50 years ago, the United States Supreme Court affirmed children's constitutional rights to due process including the assistance of counsel in delinquency court. In its decision in *In re Gaul*t, the Court recognized that in juvenile delinquency proceedings, "Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness."[2]

The Court outlined the vital role of counsel for children: "to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether [the child] has a defense and to prepare and submit it."[3] In short, the Court found that children need "the guiding hand of counsel at every step in the proceedings against [them]."[4]

But, to this day, although every state has some basic structure to provide attorneys for children, few fully satisfy *Gault*'s mandate of access to counsel for young people.[5]

This assessment of access to counsel and quality of representation for Oregon's youth is part of a nationwide effort to systematically review and provide information about the provision of defense counsel in delinquency proceedings. Over the last two decades, the National Juvenile Defender Center (NJDC) has evaluated juvenile defense delivery systems in 27 states.[6]

The purpose of a state assessment is to provide policymakers, legislators, defense leadership, and other stakeholders with a thorough understanding of children's access to counsel in the state, to identify structural and systemic barriers that impede effective representation of children, to analyze how fee and cost structures inhibit young people's access to justice, to highlight best practices where found, and to make recommendations that will serve as a guide for improving juvenile defender services for children in the state.

1 Nat'l Juvenile Defender Ctr., Defend Children: A Blueprint For Effective Juvenile Defender Services 13 (2016) [hereinafter Defend Children], https://njdc.info/wp-content/uploads/2016/11/Defend-Children-A-Blueprint-for-Effective-Juvenile-Defender-Services.pdf.
2 *In re* Gault, 387 U.S. 1, 18-19 (1967).
3 *Id.* at 36.
4 *Id.*
5 Nat'l Juvenile Defender Ctr., Access Denied: A National Snapshot of States' Failure to Protect Children's Right to Counsel 4 (2017) [hereinafter Access Denied], https://njdc.info/wp-content/uploads/2017/05/Snapshot-Final_single-4.pdf.
6 *State Assessments*, Nat'l Juvenile Defender Ctr. [hereinafter *State Assessments*], https://njdc.info/our-work/juvenile-indigent-defense-assessments/ (last visited Apr. 27, 2020).

Juvenile defense requires a broad skill set to meet core ethical obligations and to advance the legal interests of youth.[7] Juvenile delinquency specialization is vital to a fully functioning juvenile indigent defense system: "The realization of rights for children is connected to the strength of a jurisdiction's public defense system, the availability of funding and resources, and the specialization of attorneys who practice in juvenile court."[8]

Public defense delivery systems must recognize that the representation of children is different than that for adults and must support counsel who are trained to understand and incorporate adolescent development and the other unique aspects of defending youth.[9] These are not merely aspirational goals. Public defense systems must implement policies and structures to ensure the due process protections mandated by *Gault* can be realized by every young person in every corner of the state.[10]

Although every state has some basic structure to provide attorneys for children, few fully satisfy Gault's mandate of access to counsel for young people.

7 Nat'l Juvenile Defender Ctr., National Juvenile Defense Standards, Standards 8-9 (2012) [hereinafter National Juvenile Defense Standards], https://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf.

8 Access Denied, *supra* note 5, at 6.

9 Nat'l Juvenile Defender Ctr. & Nat'l Legal Aid & Defender Ass'n, Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense Delivery Systems (2d ed. 2008) [hereinafter Ten Core Principles], http://njdc.info/wp-content/uploads/2013/11/10-Core-Principles.pdf.

10 *See In re* Gault, 387 U.S. 1, 30 (1967).

Some of the key findings of the assessment include:

- **Oregon's public defense system has adopted minimum qualifications and best practices for those representing young people in delinquency cases but does not provide oversight or enforcement. As such, the system does not ensure quality representation for young people across the state.**

- **The pay structure and contracting options of Oregon's public defense system do not support defenders who would like to specialize in delinquency defense.**

- **Children's right to counsel is not uniformly realized across the state. In some jurisdictions, children are presumed indigent and automatically provided counsel, while in others, in-depth analysis of the youth's or their family's ability to pay delays and hinders the appointment of counsel.**

- **In many counties, the juvenile court has reduced or even eliminated the imposition of fees, fines, and costs for young people, removing significant financial hurdles that often result from system involvement. But this was not consistent across the counties visited.**

- **Oregon is one of just eight states that has no uniform, comprehensive guidance for procedure in delinquency proceedings. Uniform mandates for court procedure can help reduce the risk of geographic inequities in justice that thrive when local policies and court procedure vary from county to county.**

- **Access to justice and fairness can too often be contingent on where a child lives or in which courtroom their case proceeds.**

Oregon is in the midst of reforms to its public defense system in response to years of study and advocacy revealing the state's failure to fulfill its constitutional obligations.[11] As Oregon moves toward implementing a just, fair, and constitutionally compliant public defense system, it must meet its obligations to young people in its delinquency system.

11 *See* Sixth Amendment Ctr., The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services 206-216 (2019) [hereinafter The Right to Counsel in Oregon], https://sixthamendment.org/6AC/6AC_Oregon_report_2019.pdf. (last visited July 16, 2020)

Among other recommendations, this report encourages Oregon to:

- **Enforce mandatory state and national performance standards.**
- **Support specialization in juvenile delinquency defense.**
- **Ensure all youth are protected from uninformed waiver of counsel.**
- **Eliminate all fees and costs related to juvenile court, including those associated with access to a publicly funded juvenile defender.**
- **Ensure juvenile defenders are appointed to provide active advocacy for youth at every stage of the juvenile legal system, including through post-disposition proceedings and appeals.**
- **Eliminate existing racial disparities in the juvenile court system.**
- **Enact rules of procedure for delinquency matters.**

Strengthening Oregon's system of juvenile defense and establishing uniform procedures in juvenile courts could address issues identified in some areas of the state, such as delayed appointment of counsel, rushed communication with clients, insufficient detention advocacy, inconsistent motions practice, scant use of investigators and experts, perfunctory disposition advocacy, and a paucity of post-disposition and appellate advocacy. In Oregon, these and other issues all too often created barriers for attorneys striving to provide client-centered and child-focused representation.

Reforms enacted in the 2019 legislative session, as this assessment was being conducted, made significant statewide and systemwide improvements to Oregon's code to ensure justice and fairness for all of Oregon's youth, but there is more work to be done. The time is now. The legacy of *Gault* demands it. And Oregon's children deserve nothing less.

After all, this is Oregon, where *Alis Volat Propiis*, "She Flies With Her Own Wings."[12]

12 *See Oregon Focus: State Symbols: Motto*, Or. Sec'y of State, https://sos.oregon.gov/blue-book/Pages/explore/focus-motto.aspx (last visited Apr. 27, 2020).

INTRODUCTION

The Role of Counsel in Delinquency Proceedings

"[C]hildren, like adults, are denied their right to counsel not only when an attorney is entirely absent, but also when an attorney is made available in name only."[13]

On the heels of the United States Supreme Court's 1963 decision in *Gideon v. Wainwright*,[14] which affirmed the right to appointment of a publicly funded attorney to adults charged with felonies who cannot otherwise afford defense counsel, the Court decided a series of cases affirming a child's right to due process protections when facing delinquency proceedings.[15]

Seminal among these cases, *In re Gault*, decided in 1967, affirmed the right to counsel in delinquency proceedings under the Due Process Clause of the United States Constitution, as applied to states through the Fourteenth Amendment.[16] Justice Abe Fortas, writing for the majority, reasoned:

> Under our Constitution, the condition of being a boy does not justify a kangaroo court . . . . There is no material difference in this respect between adult and juvenile proceedings of the sort here involved . . . . The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it.[17]

The Court explicitly rejected the claim that others would be capable of protecting the child's interests and heralded the unique role of counsel: "The probation officer cannot act as counsel for the child. . . . Nor can the judge represent the child."[18] While the judge, the probation officer, and other court personnel are charged with looking out for an accused child's best interests, children facing "the awesome prospect of incarceration" require counsel to advocate for their stated interests and guide them in proceedings implicating potential loss of liberty.[19]

The right to effective counsel throughout the entirety of a youth's system involvement is critical.[20] It is the juvenile defender who must insist upon fairness of the proceedings, ensure the child's voice is heard at every stage of the process, and safeguard the due process and equal protection rights of the child.[21]

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13 Statement of Interest of the United States, N.P. et al. v. Georgia, No. 2014-CV-241025 (Ga. Super. Ct. 2015) [hereinafter Dep't of Justice Statement of Interest in N.P.] at 7.

14 Gideon v. Wainwright, 372 U.S. 335 (1963).

15 *In re* Gault, 387 U.S. 1 (1967); Kent v. United States, 383 U.S. 541 (1966); *In re* Winship, 397 U.S. 358 (1970); McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

16 *Gault*, 387 U.S. at 30-31.

17 *Id.* at 28, 36 (internal citations omitted).

18 *Id.* at 36.

19 *Id.*

20 McMann v. Richardson, 397 U.S. 759, 771, n.14 (1970) (stating that "the right to counsel is the right to the *effective* assistance of counsel" (emphasis added)).

21 The juvenile defense attorney has a duty to advocate for a client's expressed interests, regardless of whether the expressed interests coincide with what the lawyer personally believes to be in the best interests of the client. *See Gault*, 387 U.S. at 37. *See generally* Model Rules of Prof'l Conduct r. 1.2, 1.3, 1.4, 1.8, 1.14 (Am. Bar Ass'n 1983). "Expressed-interest" (also called "stated-interest") representation requires that counsel assert the client's voice in juvenile proceedings.

The juvenile defender is the only justice system stakeholder who is ethically and constitutionally mandated to zealously advocate for the protection of the youth's rights in a manner that is consistent with the youth's expressed interests.[22] This role is distinct from other juvenile court stakeholders such as the judge, probation officer, guardian ad litem, or prosecutor, who consider the perceived "best interests" of the child.[23]

Effective juvenile defense not only requires specialized practice—wherein the attorney must meet all the obligations due to an adult client—but also necessitates expertise in juvenile-specific law and policy, the science of adolescent development and how it impacts a young person's case, skills and techniques for effectively communicating with youth, collateral consequences specific to juvenile court, and various child-specific systems affecting delinquency cases, such as schools and adolescent health services.[24]

Youth are still developing their cognitive and socio-emotional capacities, which requires defenders to learn about and understand developmental principles.[25] The juvenile defender must apply this expertise in representing youth at all stages of the court system, including pretrial detention hearings, advisory hearings, suppression, the adjudicatory phase of a trial, disposition hearings, transfer hearings, any competence proceedings, and all points of post-disposition while a youth remains under the jurisdiction of the juvenile court.

Juvenile defenders must also ensure a client-centered model of advocacy and empower and advise their young clients using developmentally appropriate communication. These elements of juvenile defense advocacy are critical to equipping youth to understand and make informed decisions about their case, including accepting or rejecting a plea offer or going to trial, testifying or remaining silent, developing components of a defense driven disposition plan, and considering alternatives to juvenile court involvement and treatment.[26]

Children facing "the awesome prospect of incarceration" require counsel.

Juvenile defense delivery systems have a responsibility to provide juvenile defenders with the necessary training, support, and oversight to ensure attorneys have the time needed to build rapport with clients, obtain discovery and conduct investigation, engage in motions practice and appropriately prepare for hearings, monitor the post-disposition needs of clients within the court's jurisdiction, and consult with the client to ensure expresses-interest representation at all stages of court involvement.[27]

22 *See* National Juvenile Defense Standards, *supra* note 7, at Standards 1.1, 1.2. *See also Gault*, 387 U.S. at 1.

23 "Expressed-interest" (also called "stated-interest") representation requires that counsel assert the client's voice in juvenile proceedings. The juvenile defense attorney has a duty to advocate for a client's "expressed interests," regardless of whether the "expressed interests" coincide with what the lawyer personally believes to be in the "best interests" of the client. *See* National Juvenile Defense Standards, *supra* note 7, at Standards 1.1, 1.2

24 National Juvenile Defense Standards, *supra* note 7, at Standard 1.3.

25 Ten Core Principles, *supra* note 8.

26 *See* Nat'l Juvenile Defender Ctr., Role of Juvenile Defense Counsel in Delinquency Court 9 (2009) [hereinafter Role of Juvenile Defense Counsel], https://njdc.info/wp-content/uploads/2013/11/NJDC-Role-of-Counsel.pdf; *See also* Ten Core Principles, *supra* note 8.

27 Dep't of Justice Statement of Interest in N.P., *supra* note 13, at 14.

States have an obligation to ensure that children are afforded the due process protections enshrined in the Constitution and enumerated in *Gault*, including the vital role of qualified defense counsel. Merely having counsel present for children in these proceedings is inadequate if appointed counsel do not have sufficient time, resources, and expertise to provide effective advocacy. For this reason, both access to counsel and quality of representation are essential elements of protecting due process rights.

NJDC's Assessments of Juvenile Defense Systems

The National Juvenile Defender Center (NJDC) is dedicated to promoting justice for all children by ensuring excellence in juvenile defense. For nearly 25 years, NJDC has worked to better understand how the defense of young people in juvenile court is delivered, state by state, and to support improvement in the delivery of those services.

Juvenile defense systems have faltered and failed in many jurisdictions, leaving far too many children defenseless in courts of law across the country.

By conducting statewide assessments of juvenile defense delivery systems, NJDC examines how and when youth access counsel, the quality of representation they receive, and the systemic impediments that prevent youth from receiving high-quality representation. The assessments provide policymakers and leaders with accurate baseline information and data to make informed decisions regarding the structure, funding, and oversight of juvenile defense and to improve the system of delivering defense services.

NJDC has conducted statewide assessments of juvenile defense systems in 27 states.[28] These assessments not only gather information and data about the structure and funding of defense systems, but also examine whether youth receive counsel at all critical stages, the timing of appointments, waiver of counsel, resource allocation, supervision and training, and access to investigators, experts, social workers, and support staff. Reports note promising practices within a state and offer recommendations for improvements.

Several consistent themes have emerged across these state assessments, including: an array of systemic barriers prohibiting youth from receiving timely access to qualified juvenile defense counsel, juvenile defense not being recognized as a specialized legal practice, and juvenile defense being significantly under-resourced. Since the *Gault* decision, juvenile defense systems have faltered and failed in many jurisdictions, leaving far too many children defenseless in courts of law across the country.[29]

States have used assessment report recommendations to make important changes to policies and practices to strengthen juvenile defense and ensure fair and equitable treatment for youth. Recommendations have been embraced by legislators, courts, defenders, bar associations, law schools, and others to raise the bar with legislative and other policy reforms, increased funding, enhanced training, and by other means. Effective juvenile defense representation improves the administration of justice and can significantly impact the life outcomes for youth facing the juvenile legal system.

28 *State Assessments*, *supra* note 6.
29 *See generally* Access Denied, *supra* note 5.

Methodology

NJDC began its assessment process in Oregon in late 2018 with the support of Chief Justice Martha L. Walters, who issued a letter to local courts asking for their participation and cooperation in conducting the assessment. NJDC staff and consultants conducted a series of phone meetings with multiple stakeholders from private and public entities to gather information and initial insights into Oregon's juvenile defense delivery system. Simultaneously, NJDC and its partners began a deep examination of the juvenile code, caselaw, and other statutes related to juvenile defense, as well as a review of existing reports and analyses of Oregon's current and former indigent defense systems and juvenile court system data.

After evaluating a wide range of factors, NJDC identified ten counties for site visits. These counties were considered to be representative of the heterogeneity found in counties across the state, along such criteria as population size, geographic location, presence or absence of a detention facility, ethnic/racial diversity, urban/suburban/rural setting, type of juvenile defense contractors, and the number of delinquency petitions filed annually.

Site visits to these ten counties were conducted by a 20-member assessment team that included current and former public defenders, private practitioners, academics, and juvenile system advocates. Each assessment team member had several years of experience in juvenile defense, with many considered national experts in the field. Assessment team members received training on assessment protocols; were provided excerpts of relevant Oregon law, research, reports, and background information about Oregon's juvenile delinquency court and public defense systems; and participated in briefings regarding their assigned counties.

Each site visit was conducted by two to three assessment team members. These teams conducted interviews, court observations, and tours of courthouses, juvenile detention centers, and other facilities. Using interview questionnaires developed by NJDC and adapted for use in Oregon, the assessment team interviewed defense lawyers, district attorneys, judges, referees, court administrators, juvenile court counselors, juvenile department supervisors, detention and Oregon Youth Authority facility staff, and court staff involved in the collection and reimbursement of fees, fines, and other costs.

Interviews included questions about the role and performance of defense counsel, access to counsel at various stages of delinquency system involvement, and systemic impediments to effective representation. Jurisdictions are not identified in the report in order to maintain the confidentiality ensured to interview participants and to focus the report on the collective state of juvenile defense across Oregon.

Jointly, the assessment team completed 160 confidential interviews and observed approximately 80 court proceedings across the ten counties. They also collected and reviewed plea forms, standard probation forms, and other court documents, including documents relating to the imposition, collection, and enforcement of fees, fines, and other costs in juvenile court. The completed interview questionnaires, court and facility observation forms, and other documentation were submitted to NJDC for further analysis and incorporation into this assessment report. The interview questionnaires and court and facility observation forms were coded and analyzed in NVivo, qualitative data analysis software, to identify trends and outlying practices and policies.

Oregon's Defense System Structure

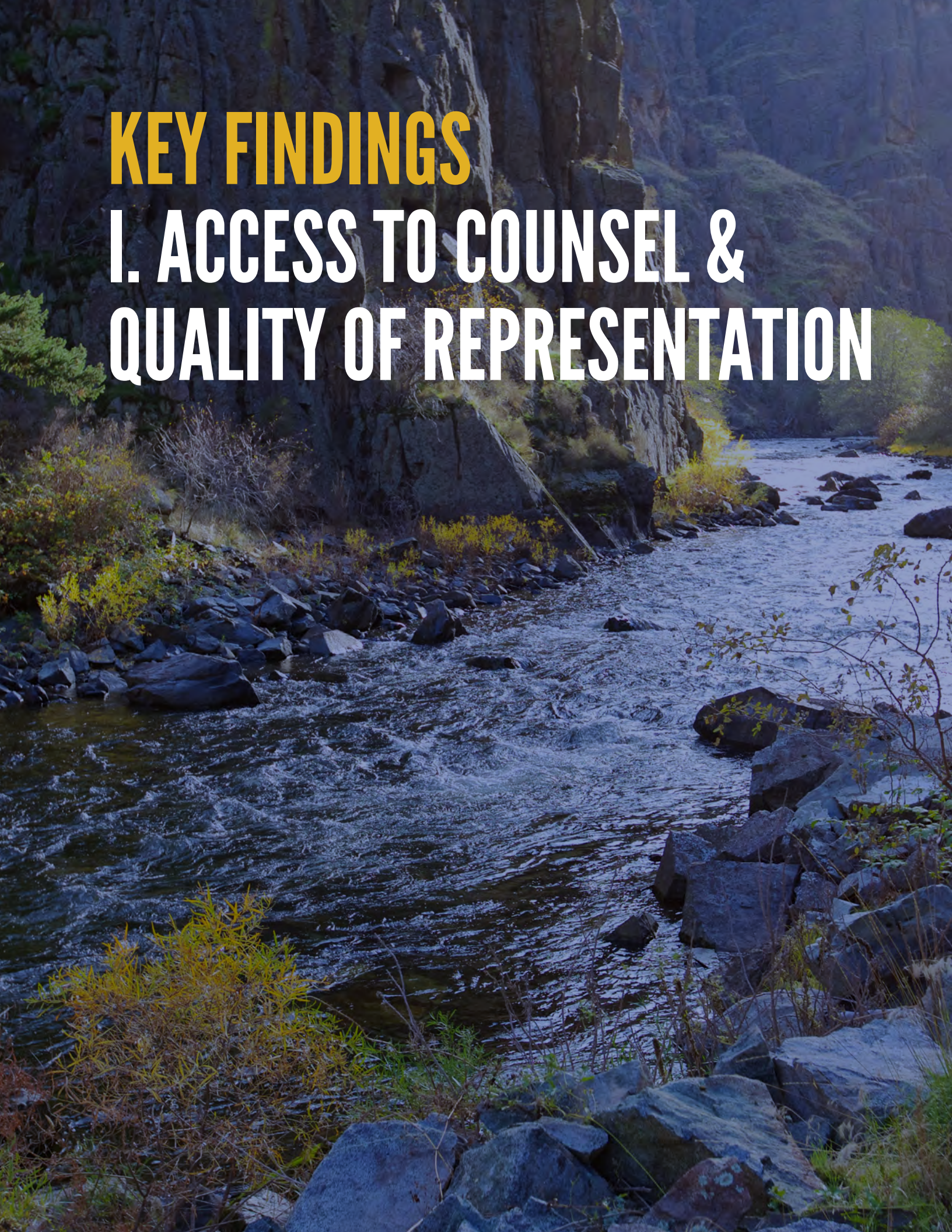
The Public Defense Services Commission (PDSC) is an independent state agency in the judicial branch of government with the primary responsibility of establishing and maintaining the state's system of public defense by providing oversight to the statewide Office of Public Defense Services (OPDS).[30] OPDS recommends to the commission the manner in which public defense services should be delivered and is responsible for affording counsel to indigent adults and children in Oregon's trial and appellate courts, and for processing payments for fees and expenses concerning such representation.[31] While the state general fund covers the costs for appointed counsel in circuit courts, local governments are responsible for funding and providing counsel at any county or local justice and municipal courts.[32]

PDSC and OPDS provide counsel for eligible adults and children through a combination of state-employed attorneys; contracts with private attorneys, consortia of attorneys, for- and non-profit law offices and organizations; and, on a case-by-case basis, through private attorneys.[33]

This report and its recommendations are the result of a yearlong assessment of Oregon's system of providing counsel to youth in delinquency proceedings. It assesses Oregon's juvenile delinquency defense system in the context of what is constitutionally required and uses national standards, research, and best practices to exemplify what juvenile defense systems should provide. The report offers a roadmap to reforms that can improve the integrity of the juvenile delinquency court system by ensuring adequate due process and equal access to justice through well-trained, effective lawyers for all youth, regardless of geography.

Oregon has already proven its commitment to strengthening its juvenile court system and its system of indigent defense. It can take the next step in ensuring justice for children by considering the findings, recommendations, and discussion of best practices that follow.

30 Or. Rev. Stat. § 151.213 (2003); Or. Rev. Stat. § 151.219 (2003); *see also* The Right to Counsel in Oregon, *supra* note 10, at 17-18.
31 *See* The Right to Counsel in Oregon, *supra* note 10, at 18.
32 *Id.* at 9.
33 *Id.* at 17-28.



KEY FINDINGS

I. ACCESS TO COUNSEL & QUALITY OF REPRESENTATION

I. ACCESS TO COUNSEL & QUALITY OF REPRESENTATION

"Access to counsel is essential to due process. Beyond being a matter of justice, the perception of fairness strengthens the legitimacy of the court. 'Treating youth fairly and ensuring that they perceive that they have been treated fairly and with dignity contribute to positive outcomes in the normal process of social learning, moral development, and legal socialization during adolescence.' If youth feel they have been treated fairly, recidivism is reduced."[34]

Appointment of counsel at the earliest possible moment, as well as continuity of counsel throughout the juvenile court process, ensures that the child's rights are protected and that there are no delays in the proceedings or burdens on the court to provide counsel at every step.[35]

Assessment interviews and court observations in the sites visited revealed disparities both in how and when children accessed counsel and the quality of representation youth received when facing delinquency proceedings. There were significant inconsistencies among defense attorneys as to how they investigate, prepare, and advocate for their clients. Assessment findings suggest that some attorneys who defend children charged with delinquent acts in Oregon, for a variety of reasons, do not consistently engage in the type of legal advocacy envisioned by the United States or Oregon constitutions, the ethical codes of professional conduct, or the Oregon State Bar Standards of Representation in Criminal and Juvenile Delinquency Cases.[36]

A. Timing of Appointment of Counsel

Counsel's immediate action early in a case is vital to ensuring the child's interests are protected "at every step in the proceedings."[37] Early and frequent contacts are also important opportunities for the defender and child to build rapport, trust, and confidence in each other.[38] By some measure, when counsel is appointed is as important as whether counsel is appointed at all.[39]

34 Nat'l Council of Juvenile & Family Court Judges et al., Honoring Gault: Ensuring Access to Counsel in Delinquency Proceedings (2016) [hereinafter Honoring Gault], https://www.ncjfcj.org/wp-content/uploads/2016/08/Access-to-Counsel-Policy-Card-Final-8.18.16.pdf (citing *In re* Gault, 387 U.S. 1, 36 (1967), Nat'l Research Council, Reforming Juvenile Justice: A Developmental Approach 6, 187 (Richard Bonnie et al. eds., 2013)).

35 *See* Nat'l Juv. Def. Standards, *supra* note 7, at Standards 1.4, 7.1, 7.5 (stating that prompt advice and action can protect many important rights of clients, that counsel should stay in regular contact with a client, and that counsel must represent clients following disposition).

36 *See* Or. State Bar, Report of the Task Force on Standards of Representation in Criminal and Juvenile Delinquency Cases (2014) [hereinafter Or. Bar Performance Standards], https://www.osbar.org/_docs/resources/juveniletaskforce/JTFR2.pdf.

37 *In re* Gault, 387 U.S. 1, 36 (1967).

38 National Juvenile Defense Standards, *supra* note 7, at Standard 2.1 cmt. *See also* Inst. for Judicial Admin. & Am. Bar Ass'n, Juvenile Justice Standards Annotated: A Balanced Approach xvi-xviii, 36 (Robert E. Shepherd, Jr., ed. 1996) [hereinafter IJA-ABA Juvenile Justice Standards], https://www.ncjrs.gov/pdffiles1/ojjdp/166773.pdf (describing the standards project).

39 National Juvenile Defense Standards, *supra* note 7, at Standards 2.1, 3.1; IJA-ABA Juvenile Justice Standards, *supra* note 38, at 73, 75; *E.g.*, Nat'l Council of Juvenile & Family Court Judges, Enhanced Juvenile Justice Guidelines, ch. III, 16-17 (2018) [hereinafter NCJFCJ Juvenile Justice Guidelines], https://www.ncjfcj.org/wp-content/uploads/2019/01/NCJFCJ_Enhanced_Juvenile_Justice_Guidelines_Final.pdf.

The National Council of Juvenile and Family Court Judges (NCJFCJ) discourages any postponement of the appointment of counsel, because it "creates unnecessary and inefficient delays, often requiring additional hearings that could have been avoided."[40] NCJFCJ's guidelines also recognize other problems caused by unnecessary delay in appointment:

> [Such delay] prevents indigent youth and families from being able to access counsel in advance of the hearing to fully explore the options and make advised and considered decisions about the best course of action. Finally, it prevents the public defender from being able to prepare for the initial hearing prior to the court date.[41]

The guidelines note that these delays are unique to children who rely on court-appointed attorneys: "Families who can afford private counsel do not have these barriers and rarely appear at a detention or initial juvenile delinquency court hearing without prior consultation with counsel."[42]

The timing of appointment of counsel depends on the stage of the proceeding and the right to counsel provided by federal and state law. In Oregon, in addition to the right to counsel guaranteed by the Due Process Clause of the United States Constitution and Gault, youth in juvenile court have the right to appointed counsel in delinquency cases once a petition is filed alleging a criminal offense, in a proceeding concerning an order of probation, or in any case in which the youth would be entitled to appointed counsel if the youth were an adult charged with the same offense.[43] Oregon law specifically provides youth the right to counsel at the following proceedings:

- Prior to entering into a formal accountability agreement;[44]
- Adjudicatory hearings;[45]
- Disposition;[46]
- Waiver to adult court hearings;[47]
- Detention hearings;[48] and
- Appeal.[49]

Further, the court may appoint counsel for any youth in any proceeding under the juvenile court's jurisdiction.[50]

The Oregon Office of Public Defense Services (ODPS) recommends early appointment: "Providers should ensure that an attorney is present at the first appearance in court of any person who may be entitled to representation by appointed counsel at state expense, including the initial arraignment in criminal cases, and shelter care or preliminary hearings in juvenile delinquency and dependency cases."[51]

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40 NCJFCJ Juvenile Justice Guidelines, *supra* note 39, at ch. III, 25.
41 *Id.*
42 *Id.*
43 Or. Rev. Stat. § 419C.200(1)(a) (2018).
44 Or. Rev. Stat. § 419C.245(1) (2018).
45 Or. Rev. Stat. § 419C.285(1) (2015).
46 *Id.*
47 Or. Rev. Stat. § 419C.352(1) (2020).
48 Or. Rev. Stat. § 419C.109(3)(b)(A) (1999).
49 Or. Rev. Stat. § 419A.211(1) (2012); Or. Rev. Stat. § 419C.285(2)(d) (2015); Or. Rev. Stat. § 419A.208(1) (2003).
50 Or. Rev. Stat. § 419C.200(1)(a)(D) (2018); Or. Rev. Stat. § 419C.005 (2020).
51 Office of Pub. Def. Servs., Best Practices for Oregon Public Defense Providers 12 (2010), https://www.oregon.gov/opds/provider/StandardsBP/BestPractices.pdf.

1. Mechanisms for Appointing Counsel

Under Oregon law, the court must appoint counsel if it determines that the youth and their parents or guardians are "without sufficient financial means to employ suitable counsel possessing the skills and experience commensurate with the nature of the petition and the complexity of the case under the policies, procedures, standards and guidelines of the Public Defense Services Commission."[52] Oregon law provides some guidance for the application process to receive appointed counsel in juvenile court.[53] However, NJDC's assessment team learned that in almost all of the jurisdictions visited, counsel was appointed for youth "no matter what, because everyone thinks kids should have an attorney."

This ethos for ensuring youth have easy access to counsel, while common, played out slightly differently from jurisdiction to jurisdiction. Stakeholders in some counties revealed that they simply have "no screening on family financials," while in one county a court official reported, "we have a rather lax system in which the parents fill out a confidential form which is reviewed by the judge or staff" and that "qualification is technically based on the parents' income, but all children qualify."

In some jurisdictions, the court has adopted a presumption that children do not have resources and thus require automatic appointment in every case. Automatic appointment ensures youth have a voice at initial hearings, where decisions are made about the youth and the charges they face. In large part, Oregon stakeholders appeared to understand the significance of counsel for youth and attempted to make every effort to implement this standard. This is because, as one juvenile court counselor put it, "the defense attorney is an important part of the child's team."

There was, however, a notable exception in one county, where families' finances were scrutinized more regularly before counsel was appointed. Assessment team members learned in this jurisdiction that if the case was a misdemeanor or a probation violation hearing, counsel was not appointed until after the child's family completed the application process. In that county, only felony cases got appointments automatically.

Access to counsel at initial proceedings ensures youth are afforded an opportunity to prepare and present a defense, challenge the allegations being brought against them, and have a legal advocate to protect their liberty interests. There should be a presumption, in every jurisdiction across the state, that every youth receive automatic appointment of counsel regardless of the offense charged or their family finances.

2. Timing of Appointment of Counsel

NCJFCJ guidelines state that counsel should be appointed prior to the detention or initial hearing and must have time to consult with and prepare their client.[54] NCJFCJ acknowledges that delays in appointment hinder communication and recommends that "if it is not possible for a youth and family to contact counsel prior to the first juvenile justice court hearing, the second preference is to provide access on the day of the first hearing with sufficient time for the youth, family, and counsel to discuss the case before entering the courtroom."[55]

52 Or. Rev. Stat. § 419C.200(1)(b) (2018). *See also* Or. Rev. Stat. § 419C.203 (2012); Or. Rev. Stat. § 419C.206 (2003); Or. Rev. Stat. § 419C.209 (2003); Or. Rev. Stat. § 135.055 (2003); Or. Rev. Stat. § 151.216 (2018); Or. Rev. Stat. § 151.219 (2003).

53 Or. Uniform Trial Court Rules, UTCR 11.010 (2006).

54 NCJFCJ Juvenile Justice Guidelines, *supra* note 39, at ch. III, 24-26.

55 *Id.* at ch. IV, 4.

Oregon law provides scant guidance related to the timing and appointment of counsel in delinquency proceedings.[56]

In the majority of jurisdictions visited, appointment was automatic, but at times it was delayed by local administrative procedures such as the timing of the filing of petitions or a requirement that official appointment take place in court, not before. In one jurisdiction, youth were required to enter a denial at the initial hearing, after talking to an on-call attorney. A different attorney was then appointed to represent them in the remainder of their hearings, "usually within a day of the intitial arraignment."

In another jurisdiction, defenders expressed frustration that the time the district attorney[57] filed the petition affected whether defenders received notice in time to meet with their clients before the hearing. They suggested that if the court moved the hearings later in the day or required district attorneys to file petitions earlier, they could consistently meet with clients in advance, so as to provide full and individualized representation in each case.

In still another jurisdiction, the formal appointment procedure required the child to sit alone at the hearing until the jurist[58] asked if the child wanted an attorney. Only then was the attorney permitted to move up and sit with the child at counsel table. An attorney told assessment team members, "it makes the child feel like they are out there on their own during their first contact with the system" and "makes a scary situation even scarier" for the young person. It also meant that the attorney, who was not yet officially appointed, had no advance opportunity to talk with the client, could not explain what was about to happen, and could not ask or answer questions relevant to the case.

Even in those jurisdictions in which attorneys were appointed before the initial hearing, many expressed concerns that they were able to meet with their clients for no more than 15 minutes before the hearing. One attorney suggested that earlier and better defense involvement would speed up the release process for children, the vast majority of whom qualify for release at the initial hearing.

Assessment team members did find that some jurisdictions had a system in place to ensure automatic early appointment and ongoing representation throughout the court proceedings. In these jurisdictions, the court simply appointed counsel for all children prior to the detention hearing when children were in custody, and prior to the pretrial and other hearings when children were not in custody. As one jurist explained, "When I go out, defense counsel is there and ready. Appointment happens in the background."

Without question, juvenile courts bear responsibility for ensuring that children have counsel appointed and present, with sufficient advance notice to effectively represent their clients' interests. In a few jurisdictions visited for this assessment in Oregon, juvenile courts have done just that, by ensuring attorneys were appointed prior to the young person's first contact with the judge and sufficiently in advance to allow for meaningful conversations with their clients. For the most part, however, this was not occurring in jurisdictions visited by the assessment team. Decisionmakers and policy advocates should work to establish the practices and policies necessary to ensure all youth have access to counsel in advance of and at initial proceedings.[59]

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56 Or. Uniform Trial Court Rules, UTCR 11.010 (2006) (providing application guidelines for children "on intake or at the earliest practicable other time").

57 Some jurisdictions in Oregon refer to their district attorneys locally as "prosecutors." The term "district attorney" will be used throughout this report for consistency.

58 Judges and referees preside over cases in juvenile court in Oregon. The term "jurist" will be used throughout this report both for consistency and to maintain anonymity of interviewees.

59 National Juvenile Defense Standards, *supra* note 7, at Standard 3.1; NCJFCJ Juvenile Justice Guidelines, *supra* note 39, at ch. III, 25; IJA-ABA Juvenile Justice Standards, *supra* note 38, at 1, 15; Honoring Gault, *supra* note 34.


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B. Waiver of Counsel

National best practices call for courts to safeguard the right to counsel by minimizing youth waiver of counsel. For example, the National Council of Juvenile and Family Court Judges cautions judges against allowing youth in delinquency cases to waive the right to counsel.[60] The United States Department of Justice has advocated that children cannot knowingly and intelligently waive their right to counsel without first having a meaningful opportunity to consult with a lawyer.[61] Without question, children need the assistance of counsel. Only defense counsel—not a probation officer, judge, or family member—can act as counsel for a young person.[62]

1. Delinquency Proceedings

Like any right, young people may waive the right to be represented by counsel, but only if the waiver of that right is knowing, intelligent, and voluntary.[63] Recognizing that without adequate information and advice, young people do not have the knowledge, experience, or developmental capacity to fully appreciate the right to counsel or what it means to relinquish it, Oregon's legislature recently enacted strong protections against waiver of counsel by youth. Specifically, a juvenile court may not accept a young person's waiver of the right to counsel except when:[64]

- "The youth is at least 16 years of age;"[65]
- "The youth has met with and been advised regarding the right to counsel by counsel who has been appointed by the court or retained on behalf of the youth;"[66]
- "A written waiver, signed by both the youth and the youth's counsel, is filed with the court;"[67] and
- "A hearing is held on the record where the youth's counsel appears and the court, after consulting with the youth, finds the waiver was knowingly, intelligently and voluntarily made and not unduly influenced by the interests of others, including the interests of the youth's parents or guardians."[68]

Additionally, caselaw clarifies that the court must also advise youth of their right to presence of counsel and permits waiver of that right only if the record clearly reflects that the decision is the product of "an intelligent and understanding choice."[69] The court must inform the child of the benefits of having counsel, the consequences of waiver, and the responsibility of waiving that right.[70]

60 NCJFCJ Juvenile Justice Guidelines, *supra* note 39, at ch. XII, 26.
61 Dep't of Justice Statement of Interest in N.P., *supra* note 13, at 1. *See also* Press Release, Dep't of Justice, Department of Justice Statement of Interest Supports Meaningful Right to Counsel in Juvenile Prosecutions (Mar. 13, 2015), https://www.justice.gov/opa/pr/department-justice-statement-interest-supports-meaningful-right-counsel-juvenile-prosecutions.
62 *See also In re* Gault, 387 U.S. 1, 42 (1967).
63 *Id.* at 55; Or. Rev. Stat. § 419C.200(2)(a)(D) (2018).
64 Or. Rev. Stat. § 419C.200(2)(a)-(2)(b) (2018) (noting the waiver-of-counsel provisions in subsection (a) do not apply to youth entering into a formal accountability agreement, although there is a right to counsel for youth in such proceedings).
65 Or. Rev. Stat. § 419C.200(2)(a)(A) (2018).
66 Or. Rev. Stat. § 419C.200(2)(a)(B) (2018).
67 Or. Rev. Stat. § 419C.200(2)(a)(C) (2018).
68 Or. Rev. Stat. § 419C.200(2)(a)(D) (2018).
69 State *ex rel.* Juvenile Dep't Linn Cnty. v. Anzaldua, 820 Or. App. 869, 871 (1991).
70 State *ex rel.* Juvenile Dep't of Marion Cnty. v. Afanasiev, 674 Or. App. 1199, 1201 (1984) (citing State v. Verna, 498 P.2d 793 (Or. Ct. App. 1972)) (holding that the court must determine a youth understands "the nature of the charge, the elements of the offense, the punishments which may be exacted" and that "it would be good practice to inform him of some of the pitfalls of defending himself, the possible advantage that attorney would provide, and the responsibility defendant incurs by undertaking his own defense.").

Oregon has two formal mechanisms to guard against waiver of counsel: a statute that requires youth to consult with a defense attorney prior to deciding whether to waive counsel, and caselaw that permits waiver only after the court fully informs youth of the advantages of representation and the dangers of waiver. Assessment team members reported that throughout Oregon, stakeholders of every discipline recognized the right to and need for the appointment of counsel at every stage of the proceedings. And a large majority of juvenile defenders, jurists, district attorneys, juvenile court counselors,[71] and court administrators reported that youth rarely waive counsel. Despite these safeguards in Oregon law, however, a handful of stakeholders revealed that in some jurisdictions, youth waiver of counsel occurred more frequently.

Where there is general success in limiting waiver of counsel, assessment team members learned that courts took additional steps to ensure children were provided counsel. For example, stakeholders in some jurisdictions reported that the juvenile court never had hearings without counsel. Some jurists admitted that they would not accept a waiver of counsel even from a youth who wanted to waive. Another jurist said that they did not ask young people if they wanted to waive; rather, they appointed counsel and instructed youth to talk to their lawyer about their case. Another explained, "sometimes kids want to admit during arraignment, but I will cut them off and appoint an attorney."

Although waiver of counsel is generally rare for most types of hearings, assessment team members highlighted some notable concerns with waiver of counsel in probation reviews and misdemeanor cases.

In one jurisdiction, assessment team members observed an unrepresented youth appear before the court for a probation review hearing without a lawyer, despite a clear statutory right to counsel in such cases:[72] no one advocated for the child's legal interests, and the court reviewed the file and set the matter for another review hearing at a later date without any discussion of whether a lawyer would be available. While in this instance, there was no discussion of counsel or waiver in the courtroom or on the record, a defender later told assessment team members, "the majority of youth here waive counsel on probation violations."

In another jurisdiction, a defender explained, "A lot of kids on misdemeanors are not getting attorneys. Some are waiving counsel on the advice of their parents, but there are no formal waivers executed." Further, "if the parent refuses to fill out the attorney application, their child will not be appointed an attorney." Assessment team members noted that even though Oregon law prohibits waiver without prior consultation with an attorney,[73] there was no evidence that consultation had occurred in the instances described or observed.

"A lot of kids on misdemeanors are not getting attorneys."

Despite these few examples, site visitors learned that most of Oregon's juvenile courts exercise their discretion under the statute and provide counsel for all children in most, if not all proceedings.

71 Some jurisdictions in Oregon refer to their juvenile court counselors locally as "probation officers." The term "juvenile court counselor" will be used throughout this report for consistency.
72 Or. Rev. Stat. § 419C.200(1)(B) (2018).
73 Or. Rev. Stat. § 419C.200(2)(a)(D) (2018).

2. Formal Accountability Agreement Proceedings

For delinquency cases diverted from prosecution, youth may waive the right to counsel prior to entering into a formal accountability agreement if the juvenile department counselor has advised the youth of the right to counsel in writing and the waiver is in writing, signed by the youth, and presented to the juvenile department counselor.[74] Even though the unsuccessful completion of a diversion agreement could result in sanctions and formal prosecution, there is no requirement that youth consult with an attorney before waiving counsel at this stage.[75] This means that, depending upon local practice, the court may not play any role in the child's decision to enter an accountability agreement without the advice of or consultation with an attorney.

Assessment team members observed a dozen hearings across three jurisdictions in which youth were unrepresented at the initial hearing. In three-quarters of these hearings, it was reported that the purpose of the hearing was to offer a formal accountability agreement.[76] The jurist in one of these jurisdictions described this process to children and their family members as "voluntary," and explained that if the young person engaged in services and abided by conditions set by the juvenile department, a formal petition would not be filed; but, "if they don't, a formal petition will be charged." Assessment team members reported that, despite the court's explanation that participation in the agreement was not required, the offer did not appear to be voluntary, in that no information was provided to the youth about alternatives to the offer or what it would mean to have a petition charged against them.

Even though Oregon law provides for the right to counsel "prior to the youth's entering into a formal accountability agreement,"[77] there was no mention of the right to counsel or of the required waiver of counsel that must be tendered to the juvenile court counselor before the agreement.[78] Youth in many of these hearings were not given an opportunity to consult with counsel before the court told them they could ask questions (none did) or before they were excused to report to the juvenile department. One stakeholder expressed concern to assessment team members that in such cases, children believed they must choose between diversion or having counsel, even though the law provides that they could have both.

As recognized by state and federal law, all of Oregon's children deserve to be represented by counsel at all stages of the proceedings and can only waive their right to counsel in very limited circumstances under very strict procedures. This right should not depend upon where youth live or a court's local practice.

There must be a concerted effort to ensure that waiver of counsel never occurs before a child first consults with an attorney.[79] In the rare instance that a child wishes to waive counsel, the court must ensure the child fully appreciates the nature of the proceedings, including the short- and long-term direct and collateral consequences of waiving counsel, and that the child knows they can change their mind about waiver at any time and have a free attorney appointed. Access to counsel is the essence of access to justice for young people facing the legal system.[80]

74 Or. Rev. Stat. § 419C.245(2) (2018).
75 Or. Rev. Stat. § 419C.200(2)(a)-(2)(b) (2018) (noting the waiver-of-counsel provisions in subsection (a) do not apply to youth entering into a formal accountability agreement, although there is a right to counsel for youth in such proceedings).
76 *See* Or. Rev. Stat. § 419C.230 (2008).
77 Or. Rev. Stat. § 419C.245(1) (2018).
78 Or. Rev. Stat. § 419C.245(2) (2018).
79 NCJFCJ Juvenile Justice Guidelines, *supra* note 39, at ch. XII, 26.
80 Defend Children, *supra* note 1, at 13.

C. Client Contact & Communication

The attorney-client relationship is fundamental to effective juvenile defense representation, and building effective rapport with a young person, particularly in a stressful situation like court involvement, takes time. Counsel for children must have an opportunity to learn about the unique characteristics of each client and take the time needed not only to learn about the child's strengths, but also to integrate those strengths into the presentation of the case at every step of representation.[81]

Prior to the first court appearance, attorneys must interview clients as soon as possible.[82] In that preliminary conversation, an attorney's job encompasses a variety of objectives: the attorney should inform the youth of the nature of the allegations and possible consequences; describe their role as an attorney, including an explanation of attorney-client privilege and confidentiality; assess the client's most urgent requests and questions; provide an overview of the case; explain what to expect in court; describe relevant pre-trial release conditions, if applicable; and provide contact information and schedule the next client meeting.[83] Whether the client is detained or released to the community, the initial meeting should be in a confidential setting.[84]

Effective rapport with a young person, particularly in a stressful situation like court involvement, takes time.

Thereafter, regular contact with child clients is crucial to ensuring youth have an understanding of the proceedings against them.[85] Ongoing client communication is also essential to obtaining key information for locating witnesses; preserving evidence; obtaining information necessary for potential motions; ascertaining the client's mental and physical health, including competence to stand trial or mental state at the time of the alleged offense; obtaining records and delinquency history; and gathering information regarding how the child was treated by investigating agencies, arresting officers, or facility staff.[86]

Consistent with an attorney's ethical duty to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation,"[87] counsel must "work to overcome barriers to effective communication by being sensitive to difference, communicating in a developmentally appropriate manner . . . and taking time to ensure the client has fully understood the communication."[88]

Effective communication with youth also requires communicating in a way that is productive and useful for the client. National standards emphasize that attorneys should use developmentally appropriate language to communicate with youth clients throughout the case.[89] Communicating with adolescents is different from communicating with adults.

81 National Juvenile Defense Standards, *supra* note 7, at Standard 2.1 cmt. *See also* IJA-ABA Juvenile Justice Standards, *supra* note 38, at 1, 15.
82 National Juvenile Defense Standards, *supra* note 7, at Standard 1.4 cmt.
83 *Id.* at Standard 2.2.
84 *Id.* at Standard 2.1.
85 *Id.* at Standard 2.4. *See also* Or. Bar Performance Standards, *supra* note 36, at Standard 2.2.
86 *See* National Juvenile Defense Standards, *supra* note 7, at Standard 2.4.
87 Or. Rules of Prof. Conduct, Rule 1.4(b) (2018).
88 National Juvenile Defense Standards, *supra* note 7, at Standard 2.6.
89 *Id.* at Standards 2.1, 2.6, 3.2, 3.5, 3.6, 4.9, 5.1, 5.9, 6.3, 6.5, 8.2, 8.5, 10.4.

Adolescents are more prone to impulsivity, more susceptible to immediate rewards, and less likely to appreciate the long-term consequences of their actions, and as such are particularly vulnerable to poor decision-making in situations that are highly emotional, extremely stressful, and socially coercive.[90] Beyond these developmental differences, attorneys must be sensitive and competent in communicating with young clients who come from different socioeconomic, racial, and ethnic backgrounds than their own.

Oregon performance standards demand regular contact and the use of language suited to youth:

> A lawyer should conduct a client interview as soon as practicable after representation begins and thereafter establish a procedure to maintain regular contact with the client in order to explain the allegations and nature of the proceedings, meet the ongoing needs of the client, obtaining necessary information from the client, consult with the client about decisions affecting the course of the defense and to respond to requests from the client for information or assistance concerning the case.
>
> Implementation:
> 1. A lawyer should provide a clear explanation, in developmentally appropriate language, of the role of both the client and the lawyer, and demonstrate appropriate commitment to the client's expressed interests in the outcome of the proceedings. A lawyer should elicit the client's point of view and encourage the client's full participation in the defense of the case.[91]

Despite the importance of effective communication with youth clients, assessment team members found a lack of regular client communication in some jurisdictions, particularly in the early stages of the proceedings. This was impacted in large part by the timing of appointment, which could dictate the amount of time defenders could talk with their clients in advance of the first hearing. And, despite the nearly universal recognition that effective and regular communication with youth clients is vital throughout court involvement, stakeholders across Oregon raised concerns both about barriers that impacted the frequency and quality of communication between youth and their attorneys and the effects of those barriers on youth.

One juvenile court counselor explained that "we are the ones who have to prep the kids for court."

For youth in custody, assessment team members found that most, but not all, defenders had an opportunity to meet with their clients for some period of time in advance of the initial hearing. But in some jurisdictions, the youth arrived only a few minutes before the hearing started, so the meetings were very brief and normally not in a confidential space. This left little time for defense attorneys to gather the necessary information to be prepared for the hearing, let alone communicate with clients about what to expect in the hearing or to build any kind of trust or rapport. One juvenile court counselor explained that the attorneys' contact with their clients is limited, "so we are the ones who have to prep the kids for court."

Beyond the initial meeting, assessment team members found that most defenders maintained regular contact with detained clients between hearings either in person or by phone, depending upon the jurisdiction and the distance between the detention center and the court. Most defenders reported that they tried to visit or meet by phone with youth in detention at least once a week or every two weeks in some cases.

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90 *E.g.*, Roper v. Simmons, 543 U.S. 551, 569-570 (2005); Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 102 (1976) (Stevens, J., concurring in part and dissenting in part). *See generally* Laurence Steinberg et al., *Are Adolescents Less Mature than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop"*, 64 Am. Psychol. 583 (2009).

91 Or. Bar Performance Standards, *supra* note 36, at Standard 2.2 (Implementation 1).

The biggest challenge defenders cited to regular communication with clients in detention was "distance and travel time." Defenders also expressed concerns about not being able to access private or sound-proof rooms in some facilities, and the confidentiality of phone lines with clients. One defender told assessment team members that "the phone is good, but I'm not sure how confidential client phone calls are." A defender in another jurisdiction explained that face-to-face meetings that were not separated by glass would be scheduled only when necessary because the youth were "patted down aggressively" before any such visit, even those with their attorney.

"I think that we all need more training on how to talk to kids."

Communicating with non-detained clients did not appear to be as regular a practice for some defenders. One defender admitted that advance contact with clients "depends on the charge. Sometimes I will call the youth right away or ask my assistant to set up a meeting, but more often it is a half-hour in advance of arraignment." In another jurisdiction, assessment team members learned that the attorneys placed the responsibility on the young client to maintain contact by giving them a business card with instructions to call if they wanted to talk. Defenders who had systems in place to communicate via text with their clients reported greater success in maintaining regular contact throughout the proceedings.

Most defenders acknowledged that in-person meetings with clients were preferable, but that transportation was a real challenge for many families. One defender told the assessment team that clients were encouraged to make contact and schedule appointments because it was important for youth to learn to take initiative. But, when the clients do not, pre-hearing contact would be initiated by the attorney.

Other system stakeholders expressed concerns about the amount and quality of communication between youth clients and their attorneys. A jurist told assessment team members that "the vast majority of the time," defenders do a good job communicating with clients about their case and the process, but "every now and then I feel like youth, especially youth who have special needs—don't quite understand what is happening." Another jurist in that jurisdiction explained that "defenders fall short when caseloads are too high," and that "some attorneys are arrogant and think they know how the case will turn out, but they fail to communicate that with the client."

A juvenile court counselor in another jurisdiction said that "sometimes children or families call me because several weeks have passed and the attorney has not called to reassure them or let them know what is going on in their case." Additionally, facility staff across the state nearly universally reported to assessment team members that once youth are committed, "communication with their attorneys is nonexistent." And, defenders and stakeholders alike in most jurisdictions reported that communication with clients after disposition was exceedingly rare because appointments generally end at disposition.[92]

While assessment team members noted communication practices among defenders as more or less satisfactory in most of the jurisdictions visited, as one jurist pointed out, more training on better communication between legal practitioners and youth would be welcomed: "While some defenders are better than others, I think that we all need more training on how to talk to kids."

92 *See* Or. Uniform Trial Court Rules, UTCR 11.020 (2006) (providing that unless a juvenile court specifies otherwise and in writing, "an order for appointment of counsel shall expire when the time for taking an appeal has expired.").

Oregon's youth deserve representation that includes regular and effective attorney-client communication. Juvenile courts must ensure that counsel is appointed automatically, in advance of a child's first appearance, and that private settings exist for children to communicate confidentially with their attorneys.[93] Without regular and ongoing communication that is tailored to each youth, juvenile defenders cannot advance the expressed interests of each client.

D. Initial Proceedings

"Juvenile court history demonstrates that 'unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure.'"[94]

Youth in Oregon have the right to counsel, including the right to appointed counsel, at any hearing that could result in detention.[95] Even for those who may not initially face the possibility of detention at their first hearing, early appointment of counsel and vigorous representation at all stages is warranted, given that a change in liberty status is always a possibility.[96]

Although pretrial procedure varies from state to state, the U.S. Supreme Court held that the Fourth Amendment requires a judge to make a probable cause determination "promptly" after arrest.[97] The Court later clarified the meaning of "prompt" by establishing a 48-hour rule for probable cause determinations.[98] In *County of Riverside v. McLaughlin*, the Court held that the county's policy of holding probable cause hearings within two days after arrest was unconstitutional under the Fourth Amendment because the county excluded weekends and holidays when computing the time.[99] Because holidays and weekends were excluded, "an individual arrested without a warrant late in the week [would] in some cases be held for as long as five days before receiving a probable cause determination."[100] Importantly, the Court did not exclude juvenile proceedings from its holding.[101]

A vital responsibility of a juvenile defender is to ensure proper procedure is followed throughout a youth's involvement with the court.[102] Defense attorneys must hold the legal system accountable and ensure that youth clients are afforded the full protections of the Constitution when they are brought before the court.

93 NCJFCJ Juvenile Justice Guidelines, *supra* note 39, at ch. IV, 4 ("If it is not possible for a youth and family to contact counsel prior to the first juvenile justice court hearing, the second preference is to provide access on the day of the first hearing with sufficient time for the youth, family, and counsel to discuss the case before entering the courtroom.").
94 *In re* Gault, 387 U.S. 1, 18 (1967).
95 Or. Rev. Stat. § 419C.109(3)(b)(A) (1999).
96 National Juvenile Defense Standards, *supra* note 7, at Standards 1.4, 10.2; NCJFCJ Juvenile Justice Guidelines, *supra* note 39, at ch. II, 17, ch. IV, 1-6; Ten Core Principles, *supra* note 8, at 74.
97 Gerstein v. Pugh, 420 U.S. 103, 125 (1975).
98 Riverside v. McLaughlin, 500 U.S. 44, 58 (1991).
99 *Id.* at 58-59. *But see*, Schall v. Martin, 467 U.S. 253 (1984) (finding that a slightly longer delay may be acceptable for youth, if other adequate procedural safeguards are in place).
100 *Riverside*, 500 U.S. at 47.
101 *Id.* at 58 (reasoning, "Everyone agrees that the police should make every attempt to minimize the time a presumptively innocent individual spends in jail.").
102 *In re* Gault, 387 U.S. 1, 18 (1967).

If the state is requesting that the youth be detained or that their initial detention by the police be extended, the court's initial hearing must address the questions of probable cause and detention.[103] And the attorney's obligations must include assessing the client's wishes about release and obtaining information regarding available conditions of release.[104]

Whether youth are being held in detention or not, at the initial hearing, "counsel's first obligation is to preserve the client's rights."[105]

1. Probable Cause Hearings

Oregon law provides that "no youth shall be in detention or shelter care more than 36 hours, excluding Saturdays, Sundays and judicial holidays, except on order of the court made pursuant to a hearing."[106] Continued detention requires a finding by the court that there is probable cause to believe the youth:

- Committed an offense that caused physical injury to another person, certain misdemeanor-level offenses, or any felony;
- Unlawfully possessed a firearm;
- Unlawfully failed to appear at a previous juvenile court hearing;
- Is currently on probation or subject to court-ordered release conditions and that the youth has violated a condition of that probation or release;
- Is a fugitive from another jurisdiction; or
- Presents a reasonable threat to a victim.[107]

There is no other requirement in Oregon law that the court make a probable cause finding for youth who are not detained, and there is no rule or statute that outlines the procedure for a court's probable cause finding.

If detention is sought, defense counsel must advocate at the probable cause hearing, challenging the assertions against the client and requiring the allegations to be supported by facts in evidence.[108] Despite these specific duties, the vast majority of defenders interviewed reported they rarely challenge probable cause. Further, very few jurists told assessment team members that they made a formal probable cause finding, even when youth were being detained.

Many stakeholders reported that probable cause never comes up during the initial hearing. In a few jurisdictions, stakeholders described that a probable cause affidavit would be filed and that the court would make a written, but perfunctory, finding based on the papers alone. Even then, no one described the probable case determination as involving the use of any evidence, and most defenders reported that there are no real opportunities to challenge probable cause on any of the statutory thresholds in their jurisdictions.

Assessment team members heard from stakeholders and observed in practice that there was a complete lack of procedure beyond the habits of the jurist presiding. These inconsistencies in addressing and determining probable cause may have been due, in part, to the absence of written rules of juvenile procedure.

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103 Or. Rev. Stat. § 419C.145 (2008).
104 National Juvenile Defense Standards, *supra* note 7, at Standard 3.8.
105 *Id.* at Standard 3.6.
106 Or. Rev. Stat. § 419C.139 (1999).
107 Or. Rev. Stat. § 419C.145(1) (2008).
108 National Juvenile Defense Standards, *supra* note 7, at Standard 3.7.

While a defender in one jurisdiction mentioned that after attending a recent training, they always challenged probable cause, another defender in that same jurisdiction told assessment team members that what they learned at that training "could never work here." Again, the lack of routinized, uniform procedure may be contributing to a feeling by defense attorneys that there is no place for them to address probable cause, despite their duty to do so.

Although Oregon's performance standards for defenders provide, "If the client is in custody or detention, the lawyer should review the documents supporting probable cause and, if appropriate, challenge any finding of probable cause,"[109] there are almost no attorneys challenging probable cause in delinquency hearings and very few jurists who are making a formal determination of probable cause.

2. Detention Hearings

Oregon law establishes a presumption for releasing youth.[110] However, youth brought into custody and detained for alleged law violations may be initially held for up to 36 hours to allow for the development of a release plan to ensure youth safety and return to court, but no youth may be held in detention or shelter care for more than 36 hours excluding weekends and holidays, except upon order of the court after a hearing.[111]

If, and only if, the court has found probable cause for one of the statutory thresholds for the youth's continued detention, can the parties turn to the question of whether continued detention is actually warranted in a particular case.[112] If there is no probable cause for continued detention, the court lacks authority to detain further.[113] If the court finds probable cause, the court must then determine whether the child should be released.[114]

Additionally, "[n]o youth under 12 years of age shall be placed in detention except pursuant to judicial review and written findings describing why it is in the best interests of the youth to be placed in detention."[115] Youth 18 years of age or older who are detained while under the jurisdiction of the juvenile court may be detained in a facility with adults, but are subject to all of the rights and procedures that apply to youth in custody.[116]

109 Or. Bar Performance Standards, *supra* note 36, at Standard 2.3 (Implementation 1).
110 Or. Rev. Stat. § 419C.145(2) (2008); Or. Rev. Stat. § 419C.100 (2008).
111 Or. Rev. Stat. § 419C.136 (1995); Or. Rev. Stat. § 419C.170 (1995); Or. Rev. Stat. § 419C.139 (1999); Or. Rev. Stat. § 419C.173 (2008).
112 Or. Rev. Stat. § 419C.145(2), (5) (2008); Or. Rev. Stat. § 419C.100 (2008).
113 *Id.*
114 *Id.*
115 Or. Rev. Stat. § 419C.133 (2001).
116 Or. Rev. Stat. § 419C.125 (2003).

If a court makes the determination to hold a young person, Oregon law provides that the youth may only be held for a maximum period of 28 days, subject to one additional 28-day extension for good cause shown, or otherwise as ordered by the court.[117] Detained youth are subject to a detention review hearing every ten days, excluding weekends and holidays.[118] But because Oregon lacks sufficient statutory or rule-based guidance on the procedure for detention and probable cause hearings, including who bears the burden of going forward and whether the rules of evidence apply, the legal standard for those hearings is unclear. Nonetheless, juvenile defense attorneys have an obligation to "make every effort to have meaningful contact with the client prior to the detention hearing" and "seek immediate release" if "consistent with the client's expressed interests."[119]

Many stakeholders told the assessment team that fewer youth were being detained overall. However, when youth were detained, defender advocacy was at times hindered by the lack of alternative placement options in some jurisdictions and the inability of defenders to spend adequate time with clients before the hearings necessary for developing an alternative plan.

Of defenders asked about the time spent with their clients before the detention hearing, the majority spent 15 minutes or less with their clients in preparation for a detention hearing. When asked about their advocacy at the detention hearing, the majority of defenders interviewed reported regularly advocating for their clients' release. However, court observations and stakeholder interviews revealed some concerns with defender advocacy at detention hearings.

Interviews revealed some concerns with defender advocacy at detention hearings.

Assessment team members were able to observe a small sample of detention or detention review hearings across six of the ten jurisdictions visited. In two of these hearings, the assessment team reported that defenders were "prepared and engaged." In one of these hearings, assessment team members observed that the attorney had a command of the case and was actively working with the client and the parents to craft a release plan. A jurist in one jurisdiction said, "given the paradigm of our system, [defenders] are responding appropriately" by submitting "different release requests for different kids." In another jurisdiction, a juvenile court counselor said that defenders "do a fabulous job" at detention hearings; "annoyingly so."

On the other hand, some assessment teams expressed concern about the absence of actively engaged defenders zealously advocating on behalf of their clients in other detention hearings that were observed. Three detention review hearings were described as "perfunctory" by assessment team members. At one initial detention hearing described as "very quick," the defender was asked if they had the probable cause statement. The court reportedly did not make a finding of probable cause, and the attorney made no argument challenging probable cause or detention. The court said that the offense was a "detainable misdemeanor" and ordered the youth held until the ten-day review, without objection or argument by the defense.

117 Or. Rev. Stat. § 419C.150 (2014) (providing exceptions for cases related to murder or treason, or in cases where competence has been raised).

118 Or. Rev. Stat. § 419C.153 (2008).

119 National Juvenile Defense Standards, *supra* note 7, at Standard 3.8. *See also* Or. Bar Performance Standards, *supra* note 36, at Standards 2.2, 2.3.

Assessment team members found that although the ten-day review provision[120] could, in theory, provide defenders ample opportunity to engage in vigorous detention advocacy, too often it seemed to operate as a justification for holding youth for ten days after the initial hearing. Although this practice may be convenient for stakeholders, it discounts the inherent risks associated with detaining youth for any period of time.[121] In two separate jurisdictions, jurists explained that defenders could do better with more time in advance for preparation. One said, "[defenders] only have two to three minutes to talk to the family" and "they do what they can do."

"[Defenders] only have two to three minutes to talk to the family" and "they do what they can do."

Several interviews reflected concerns about detention advocacy. One defender admitted that they argued for alternatives to detention but not for release, even when clients wanted to be released, "because it is not always in the client's best interest to be released." This was despite the clear expressed-interest mandate for defenders in delinquency court. And a defender in another jurisdiction explained that even if there are good reasons for release, if a client is rearrested while out on conditional release, "I know they aren't going to let them out, so I don't even argue." A juvenile court counselor in another jurisdiction reported that defenders would have greater success if they focused on out-of-court advocacy as well: if defenders would take the time to talk to other players before the detention hearings, "it would open up a different outlook for their clients; but, they do not do their due diligence." Instead, they make unsuccessful arguments in court and their clients end up being held.

Early appointment, time to meet with the client, and full, participatory presence of counsel for the initial hearing ensures a youth's vital due process rights. Stakeholders across Oregon must work together to ensure that whenever detention is a possibility, defense counsel has an opportunity to challenge probable cause and insist upon release when probable cause is not sufficiently established; argue strenuously against detention in every case, consistent with their clients' expressed interests; and educate the court about the harms of detention.[122] The risks associated with curtailing a young person's liberty—disruptions to their education, family, employment, and social connection, as well as the potential for victimization within facilities[123]—make it imperative that juvenile defense counsel present a well-prepared, client-driven release plan at every detention hearing.

E. Case Preparation

Recognizing that a delinquency proceeding for a child can be "comparable in seriousness to a felony prosecution," the Court in *Gault* explained the importance of the assistance of counsel: "The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it."[124]

120 Or. Rev. Stat. § 419C.153 (2008).

121 Nat'l Juvenile Defender Ctr., A Right to Liberty: Resources for Challenging the Detention of Children (2019), https://njdc.info/wp-content/uploads/2019/A-Right-to-Liberty-Resources-for-Challenging-the-Detention-of-Children-1.pdf.

122 National Juvenile Defense Standards, *supra* note 7, at Standard 3.8 cmt.

123 *See* Richard A. Mendel, The Annie E. Casey Found., Maltreatment of Youth in U.S. Juvenile Corrections Facilities: An Update (2015), https://www.ncmhjj.com/wp-content/uploads/2015/07/aecf-maltreatmentyouthuscorrections-2015.pdf; Barry Holman & Jason Ziedenberg, Justice Policy Inst., The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities (2006), http://www.justicepolicy.org/uploads/justicepolicy/documents/dangers_of_detention.pdf.

124 *In re* Gault, 387 U.S. 1, 36 (1967).

In all delinquency cases, information about the case is necessary to aid in the young person's decision to plead or go to trial. It is the lawyer's duty to conduct prompt investigation and to "[e]xplore all avenues leading to facts concerning responsibility for the acts or conditions alleged . . . ."[125] "The investigation should always include efforts to secure information in the possession of prosecution, law enforcement, education, probation and social welfare authorities[, and t]he duty to investigate exists regardless of client's admissions . . . ."[126]

Thorough preparation and investigation are invaluable. In addition to aiding in the client's decision to enter an admission, accept a plea, or go to trial, information discovered through investigation can persuade the government to drop the case altogether or dismiss certain charges. Without investigating the case or pursuing all available discovery from the government, defenders are unable to effectively advise about plea offers or taking the case to trial.

1. Discovery

Discovery is essential for providing the full picture of the prosecution's case to aid in the client's defense and to make decisions about how to proceed. While there are no uniform rules of juvenile court procedure in Oregon, the juvenile code specifically provides that the criminal procedure laws relating to pretrial discovery apply in all delinquency proceedings.[127] The prosecution must disclose certain witness information, statements, recordings, and other information pertinent to the case that is in the government's possession, as well as anything that may be exculpatory or may mitigate the youth's involvement in the charged offense,[128] and any information about the occurrence of a search or seizure.[129]

While the government is required to provide the defense with certain information through discovery,[130] defense attorneys have a corresponding responsibility to request this information and pursue it, through litigation when necessary, when it is not provided in accordance with the law.[131] National and state juvenile defender performance standards also demand that defenders challenge issues regarding discovery obligations.[132]

Despite the pretrial discovery mandate in the code and in performance standards, assessment team members learned that pretrial discovery practice and procedure varied from county to county. In some of the counties visited, stakeholders felt that discovery was smooth and complete, while stakeholders in other counties cited significant obstacles. Overall, however, the near-complete lack of discovery advocacy, even in jurisdictions where stakeholders acknowledged problems with the process, was concerning.

125 IJA-ABA Juvenile Justice Standards, *supra* note 38, at 80.
126 *Id.*
127 Or. Rev. Stat. § 419C.270(5)-(6) (2020) (providing that Or. Rev. Stat. § 135.815(1)(a)-(e), (g), Or. Rev. Stat. § 135.815(3) (2020), Or. Rev. Stat. § 135.825 (1999), Or. Rev. Stat. § 135.835 (1999), Or. Rev. Stat. § 135.845 (1999), Or. Rev. Stat. § 135.855 (2007), and Or. Rev. Stat. § 135.865 (1999) regarding pretrial discovery apply to proceedings brought under the jurisdiction of the juvenile court pursuant to Or. Rev. Stat. § 419C.005 (2020)).
128 Or. Rev. Stat. § 135.815(1)(a)-(e), (g); Or. Rev. Stat. § 135.815 (3) (2020); Brady v. Maryland, 373 U.S. 83 (1963).
129 Or. Rev. Stat. § 135.825 (1999).
130 Fisher v. Angelozzi, 285 Or. App. 541, 547-548 (2017) (citing Brady v. Maryland 373 U.S. 83 (1963) and its progeny) (recognizing that prosecutors have a separate duty under the U.S. Constitution "to disclose evidence that is favorable to the defense and material to guilt or sentencing."); Kyles v. Whitley, 514 U.S. 419 (1995) (noting that an "individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.").
131 National Juvenile Defense Standards, *supra* note 7, at Standards 4.1, 4.5- 4.6.
132 National Juvenile Defense Standards, *supra* note 7, at Standard 3.6; Or. Bar Performance Standards, *supra* note 36, at Standard 5.1 (Implementation 2).

Stakeholders in more than half of the jurisdictions visited stated that discovery can be a problem. In nearly all of these jurisdictions, defenders expressed that "timeliness" in receiving discovery was a problem. One court official explained that "discovery can be a challenge" because "the prosecutor's office is short staffed and obtaining discovery from law enforcement can take even longer."

Additionally, defenders in more than half of the ten jurisdictions visited reported that the process could be delayed because the district attorney's office gives discovery to the juvenile department to review and redact before the defense obtains it from the juvenile department. There were also reportedly widespread obstacles to obtaining video interviews of clients and witnesses in a timely manner.

Complete and timely discovery practices should be consistent across all delinquency courts in Oregon.

In the other jurisdictions visited, defenders reported "that there were "no obstacles" concerning pretrial discovery, that "there is a [statute] that governs this so there are no problems here," and that they "have never had to file a motion to compel." One defender remarked that discovery in juvenile cases "is even better than in my adult cases."

Discovery is one of the few areas of juvenile court process that has clear guidance provided by the code.[133] Counsel's duty to request discovery in every case is likewise clear.[134] Therefore, assessment team members were surprised to learn that only one defender of those interviewed across the state seemed to be aware that the criminal court discovery provisions in the code apply in juvenile court, and not a single defender reported litigating discovery disagreements in the numerous jurisdictions in which discovery problems were reported.

Complete and timely discovery practices should be consistent across all delinquency courts in Oregon. And given the clear statutory guidance, juvenile defenders have colorable claims to challenge any shortcomings in their jurisdictions' practices and policies. Obtaining information necessary to assess the strength and evidence of a case, as well as defenders' responsibilities to advocate for their clients' rights to this information are crucial to effective juvenile defense practice.

2. Investigation

In addition to safeguarding the discovery process and reviewing all discovery made available to the defense, juvenile defenders have an obligation to conduct their own investigation in every case.[135] Discovery only applies to information that is known or should be known to the state, and the defense attorney's duty to investigate goes to collecting information beyond what the state knows. "Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. . . . The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty."[136]

133 Or. Rev. Stat. § 419C.270(5)-(6) (2020) (providing that Or. Rev. Stat. § 135.815 (1)(a)-(e), (g), Or. Rev. Stat. § 135.815 (3) (2020), Or. Rev. Stat. § 135.825 (1999), Or. Rev. Stat. § 135.835 (1999), Or. Rev. Stat. § 135.845 (1999), Or. Rev. Stat. § 135.855 (2007), and Or. Rev. Stat. § 135.865 (1999) regarding pretrial discovery apply to proceedings brought under the jurisdiction of the juvenile court pursuant to Or. Rev. Stat. § 419C.005 (2020)).

134 National Juvenile Defense Standards, *supra* note 7, at Standard 3.6; Or. Bar Performance Standards, *supra* note 36, at Standard 5.1 (Implementation 2).

135 National Juvenile Defense Standards, *supra* note 7, at Standards 4.1-4.4.

136 ABA Standards for Criminal Justice: Prosecution and Defense Function § 4-4.1 (Am. Bar Ass'n, 3d ed.1993) [hereinafter ABA Standards for Criminal Justice].

Early and comprehensive investigation is necessary to thoroughly test the charges brought against the child client and to provide sound advice.[137] In neighboring Washington, failure to properly investigate a juvenile case prior to advising a youth client on a guilty plea has been found to be grounds for ineffective assistance of counsel.[138]

Assessment team members found that most defenders conduct some investigation in their juvenile cases, but not all defenders conduct an investigation in every case—especially those in which a child would likely admit. Additionally, the methods and resources for investigation varied widely depending upon the attorney, the setup of their office, the nature of their contract with OPDS, and the jurisdiction in which they practiced.

When asked how frequently they used an investigator to prepare their cases in the last twelve months, nearly half reported doing so infrequently, while the rest reported more regular use using investigators. A defender in one jurisdiction said that "there are only a handful of investigators in town, so we rarely use an investigator to prepare for trial." In more than half of all jurisdictions visited, some of the defenders reported that they would do more investigations if they had an investigator in their office.

While some defenders reported that they could and have completed thorough investigations on their own, there was no dispute that well-trained and well-resourced investigators are a vital part of a young person's defense team. This is particularly true when interviewing potential witnesses, because lawyers who do not utilize an independent investigator run the risk of being unable to impeach witnesses if their stories change over time.

Defenders reported that they would do more investigations if they had an investigator in their office.

Defenders across the state cited several factors that influence when and how often they can utilize investigators for a youth's case. One defender told assessment team members they "don't use investigators much because the investigators 'don't work well with youth.'" Many defenders, especially private attorneys who represent youth on appointments but aren't part of an office with established and shared resources, reported a shortage of investigators "due to funding and approval" issues, the "low fees allowed" for investigators in appointed cases, investigators' high caseloads, delays in obtaining investigation reports, and a dearth of youth-specific expertise in especially remote and rural jurisdictions. Further, while some defense attorneys reported that OPDS had a fund for utilizing investigators, others were not aware of this.

Thorough investigation is a hallmark of good defense.[139] While assessment findings suggest that a majority of defenders interviewed used investigators in some of their cases, juvenile defenders simply cannot meet their ethical and other obligations to all of their clients without conducting an adequate investigation in every case. Oregon must ensure that juvenile defenders in every corner of the state have ready access to investigators with youth-specific training and experience to ensure equal access to justice for all youth.

137 National Juvenile Defense Standards, *supra* note 7, at Standard 4.1 cmt. (citing ABA Standards for Criminal Justice, *supra* note 136, at § 4-4.1; Role of Juvenile Defense Counsel, *supra* note 26, at 14-15).

138 State v. A.N.J., 168 Wash.2d 91, 111-112 (2010) (holding that "at the very least, counsel must reasonably evaluate the evidence against the accused and the likelihood of a conviction if the case proceeds to trial so that the defendant can make a meaningful decision as to whether or not to plead guilty.").

139 National Juvenile Defense Standards, *supra* note 7, at Standards 1.1, cmt, 1.6, cmt; 2.2 cmt; 3.6; Or. Bar Performance Standards, *supra* note 36, at Standard 5.1 (Implementation 2).

3. Motions

A crucial part of case preparation is filing appropriate motions. These can include a wide range of motions, such as those challenging pretrial detention, discovery motions, motions to suppress evidence, and numerous other pretrial motions.[140] In short, motions are integral to zealous advocacy and protecting a client's rights.

There is no statewide guidance with respect to how and when motions must be filed in juvenile delinquency proceedings, and NJDC's assessment team members found that jurisdictions did not have standard timeframes in delinquency proceedings across the state. Only a few sites had Supplemental Local Rules (SLRs) that either explicitly applied in juvenile court or had been adopted from the criminal procedure statutes by local practice.

Although no stakeholder specifically articulated that the juvenile court followed the Time-to-Disposition standards applicable in criminal cases or proposed by the Oregon Judicial Department,[141] in at least one jurisdiction, defenders reported that the court's concerns about keeping the docket moving sometimes had a chilling effect on their case preparation and written motions practice.

Across Oregon, most defenders reported engaging in at least some motions practice, but acknowledged that they need to advocate more strenuously through regular motions practice. Jurists and district attorneys reported that written motions practice in juvenile court is rare and that the quality of motions practice overall is lacking.

Of the defenders interviewed in ten jurisdictions across the state, the majority said they filed motions at least sometimes in their cases. When asked about the types of motions filed, the most common responses were motions relating to a client's competence ("aid and assist") and suppression of statements. Only one attorney reported using motions practice as a way to advance understanding of adolescent development by challenging the intent elements as applied to a young person.

Some attorneys reported that they make oral motions with some frequency but never file written motions in delinquency cases. Other attorneys told assessment team members that they submit motions to opposing counsel for purposes of negotiation, but rarely end up filing them.

Although most attorneys described some motions practice, one attorney told assessment team members that they do not file pretrial motions generally because they believe "most young people committed their offenses." Although this perspective was not expressed by other defenders, it raised concerns about young people being denied due process if appointed lawyers share this sentiment.

When asked about the issues that affect their motions practice, one defender explained to assessment team members that they "would like to file more motions, but they would like samples to be more easily accessible so they don't always have to start from scratch."

Other stakeholders expressed to the assessment team that low defender pay or an inability to be paid for out-of-court time was a possible disincentive to vigorous motions practice. Others surmised that juvenile defenders have "too many cases and not enough time" or that they "lack experience" in advocating through motions practice.

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140 National Juvenile Defense Standards, *supra* note 7, at Standard 4.7; Or. Bar Performance Standards, *supra* note 36, at Standard 5.4, cmt (citing National Juvenile Defense Standards, *supra* note 7, at Standard 4.8 cmt.)

141 *See* Or. Judicial Dep't, Time to Disposition Standards for Oregon Circuit Courts 15 (2018), https://www.courts.oregon.gov/rules/Other%20Rules/E7j99025.pdf. (last visited July 16, 2020)

When discussing the strengths and limitations of juvenile defenders' motions practice with assessment team members, a district attorney said, "their motions practice is not strong. The defenders may use arguments in negotiations but not much in court." A jurist echoed this concern:

> A limitation is know-how. There is a tendency toward the informal. They avoid written motions, which is problematic because there is a lack of legal citations or factual statements. It's frustrating. Often attorneys think they can solve it without trial; [they] don't want to spend time drafting motions and memos.

A robust motions practice is a key indicator of an effective juvenile defense practice. Motions provide defenders with an initial opportunity to ensure that due process is afforded to all youth facing delinquency allegations, and Oregon defenders must be given ample compensation and support to meet their obligations to each client and file written pretrial motions as appropriate in every case.

4. Experts

In keeping with best practices, attorneys must seek out experts and other professionals necessary for trial preparation, evaluation of clients, and testing of physical evidence, where appropriate.[142] Experts should be utilized, not just for trial testimony, but in cases involving a youth's competence,[143] to ensure effective communication with a client,[144] for help investigating and addressing mistreatment in youth facilities,[145] and for mitigation and advocacy surrounding particular programing at disposition, among other considerations.[146]

Assessment findings suggest that the majority of defenders sometimes used experts to prepare their delinquency cases, with only a handful reporting they never used experts. The majority of defenders who used experts do so in "aid and assist" (youth competence) matters or in cases involving allegations of sex offenses. While a few defenders told assessment team members that they occasionally used experts for pretrial suppression motions, assessment team members learned that the use of experts was lacking in many juvenile courts. One jurist told assessment team members flatly, "juvenile defenders do not use experts here."

The use of experts was lacking in many juvenile courts.

Interviews with defenders suggested that some defenders faced obstacles in requesting experts and the process for requesting experts reportedly varied depending on the jurisdiction. One defender explained to assessment team members that "in the old days, the experts came from the court's budget, but now the requests go straight to OPDS."

Assessment team members learned that requests for expert funding are classified by OPDS as "non-routine" expenses, and that while most of the defenders interviewed reported that their requests for experts are rarely denied by OPDS, some explained that they sometimes need to resubmit requests after an initial denial.

142 National Juvenile Defense Standards, *supra* note 7, at Standard 4.7.
143 *Id.* at Standard 1.3.
144 *Id.* at Standard 2.6.
145 *Id.* at Standard 2.8.
146 *Id.* at Standard 6.7.

Defense attorneys highlighted the availability of experts as another obstacle. In one jurisdiction, a defender said they had to "locate an expert, find one willing to take the case, determine their fee, and engage with them" before they submit a request. In other jurisdictions, defenders said administrative delays made requesting experts difficult: "the only obstacle is getting approval in a timely manner" and "OPDS is three weeks behind in approving the funding." Some defenders, especially those in more rural locations, expressed concerns about there being a limited number of experts within their jurisdictions.

Oregon must ensure that expert assistance is available whenever necessary to defend youth in delinquency cases. Every child charged with an offense has the right to an attorney who will develop all available legal defenses and prepare mitigation evidence. The failure to enable this in every case runs contrary to the Supreme Court's recognition that children require counsel's assistance to investigate, ascertain whether any defenses exist, counsel their young clients, and submit arguments to the court.[147]

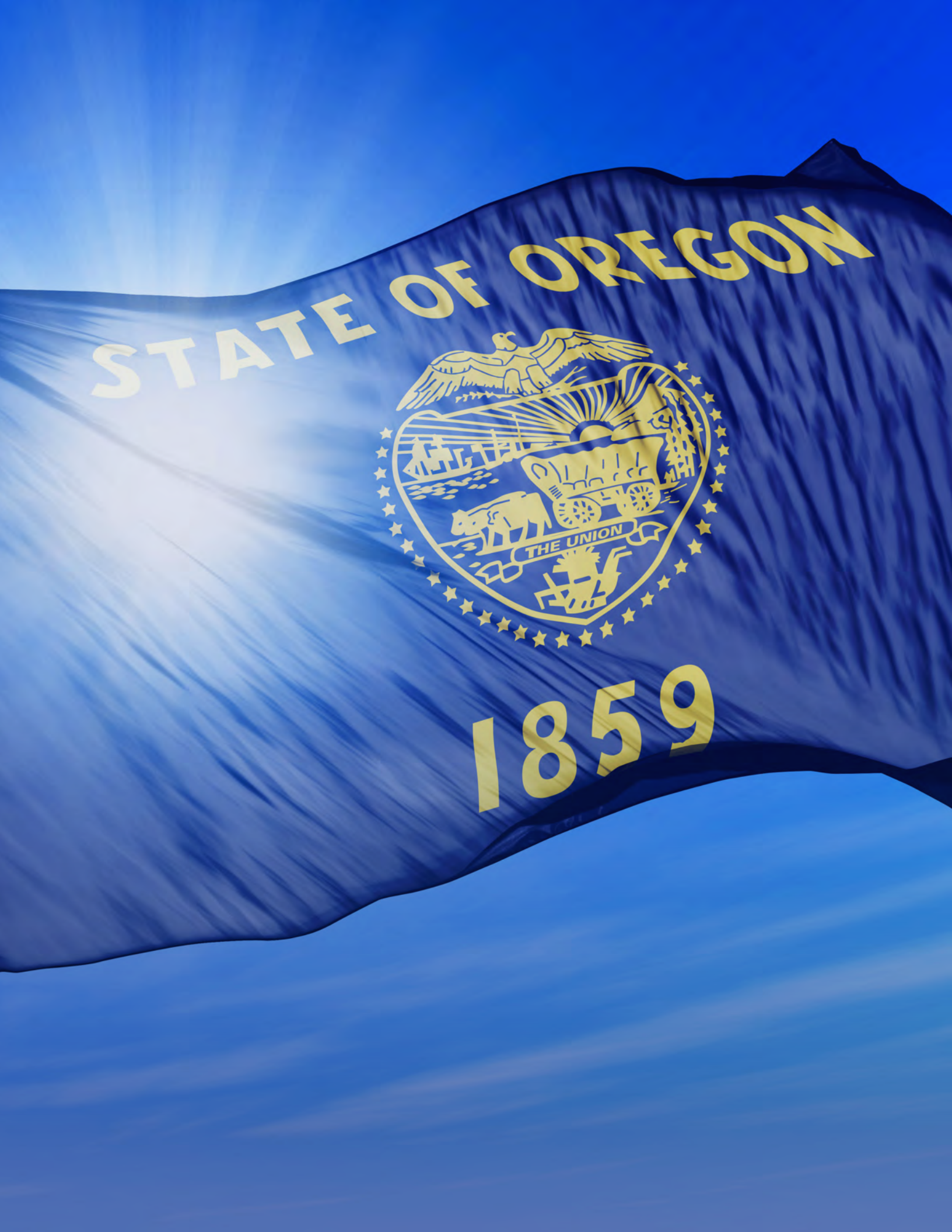
5. Case Preparation Generally

Assessment team members also asked stakeholders across Oregon about general impressions of defender preparedness. Opinions were mixed. Some judges and district attorneys were broadly complimentary about juvenile defenders' preparation in delinquency cases. Several jurists were generally pleased with the level of case preparation of the defense bar, and one explained, "defenders will surprise you: sometimes I'll think they'll settle but they are still prepared and understand their case and theory." A district attorney told assessment team members, "juvenile defenders are more prepared than adult defenders."

But some stakeholders, including some defenders themselves, expressed concerns. Jurists described "time" as the general limitation on defenders' case preparation, and "not having enough time to speak with clients." A district attorney similarly expressed concern that defenders' preparation suffers because "their caseloads are too high and spread out over delinquency, adult criminal, dependency, and their civil practices." Defenders themselves echoed these concerns about high caseloads and limited time with clients, adding that updated office equipment and basic resources like in-office investigators and social workers would greatly improve not only their preparation, but also their practice overall.

Sound defense practice must include careful case preparation, including being well-versed in the law, obtaining all discovery from the prosecution, conducting thorough and prompt investigation, filing appropriate motions, and utilizing experts to aid in both the adjudicatory and disposition phases of a case.[148] Oregon must provide systemic support so defenders can better prepare and provide consistently high-level representation in every child's case. Anything less amounts to a denial of the right to counsel mandated by *Gault*.[149]

147 *See In re* Gault, 387 U.S. 1, 36 (1967).
148 National Juvenile Defense Standards, *supra* note 7, at Standard 4.7.
149 *See Gault*, 387 U.S. at 36.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F. Adjudication & Plea Hearings

The decision whether to plead or proceed to trial rests solely with the youth, but defense attorneys have an ethical obligation to provide advice and enough information for youth to make an informed decision.[150] This advice must be based on an understanding of the youth's goals and objectives, not what the defense attorney prefers.[151] Accordingly, defense counsel must work with their clients to understand the young person's goals and expectations.[152] Prior to engaging in plea negotiation, attorneys must convey any offers made by the prosecution, just as in an adult case.[153]

Advising young clients on the merits of going to trial versus accepting a plea offer is one of the most challenging aspects of juvenile defense practice. In keeping with expressed-interest representation, defense attorneys must counsel clients with an objective assessment of the case and without exercising undue influence on the client's decision. This is especially important because pleas are an all-too-common occurrence, especially in juvenile court.[154]

Advising young clients on the merits of going to trial versus accepting a plea offer is one of the most challenging aspects of juvenile defense practice.

If a client chooses to proceed to trial, the attorney must engage in the full range of trial practice, including filing appropriate motions,[155] preparing witness testimony,[156] making appropriate motions and objections during the course of the trial,[157] cross-examining government witnesses, and presenting defense witnesses and other evidence necessary for an adequate defense.[158] Defense counsel should not fall victim to the informality of trials in juvenile court and should present opening and closing arguments.[159]

While the assessment team was unable to obtain statewide data on the number of juvenile pleas versus trials, stakeholders interviewed opined that the vast majority of petitioned cases ended in guilty pleas short of trial.

There was, however, discussion of strong trial practice in some locations. In fact, of the defenders interviewed who had recently tried a case in juvenile court, the majority reported winning at trial. One assessment team had the opportunity to observe a trial during their visit, and reported the attorney "seemed prepared, had an obviously good relationship with the client, and made good objections and arguments throughout the trial." When the judge issued their ruling in the youth's favor and ordered the case dismissed, the young person did not react until the attorney leaned over and said, "You won!" at which point the child jumped up and hugged the attorney.

150 Or. Rules of Prof. Conduct, Rules 1.2 (2015), 1.4 (2005).
151 *See* Or. Rules of Prof. Conduct, Rules 1.2 (2015), 1.7(2) (2005) (prohibiting lawyers from pursuing their own interests against those of a client).
152 National Juvenile Defense Standards, *supra* note 7, at Standards 1.2, 4.9.
153 *Id.* at Standard 4.9; Missouri v. Frye, 566 U.S. 134 (2012).
154 Nationally, about 95 percent or more of all convictions—in juvenile and criminal courts—are the result of guilty pleas (U.S. Dep't of Justice, Felony Defendants in Large Urban Counties, 2009 - Statistical Tables (2013), https://www.bjs.gov/content/pub/pdf/fdluc09.pdf (last visited July 16, 2020) (citing 2009 statistics)); Allison D. Redlich & Reveka V. Shteynberg, *To Plead or Not to Plead: A Comparison of Juvenile and Adult True and False Plea Decisions,* 40 Law & Hum. Behav. 611-625 (2016) [hereinafter *To Plead or Not to Plead].*
155 National Juvenile Defense Standards, *supra* note 7, at Standard 4.7.
156 *Id.* at Standard 5.2.
157 *Id.* at Standards 5.3, 5.6, 5.8.
158 *Id.* at Standards 5.5, 5.6, 5.8, 5.9.
159 *Id.* at Standards 5.4, 5.10.

With regard to the high number of pleas in delinquency court, a defender told assessment team members that they struggled when advising detained youth about entering a plea because the "prospect of release is itself coercive: a lot of kids feel rushed, especially when they are detained. The financial motivation is to 'stop the bleeding' of the cost of keeping a child detained, so they are encouraged by various stakeholders, including their own families, to plead guilty." The defender described meeting children in detention "where they get discovery today and want to plead tomorrow" leaving no time to investigate or spend the requisite time with their young client.

Many defenders expressed concern that the large number of pleas may be eroding both the presumption of innocence and the requirement that the government meet its burden of proof beyond a reasonable doubt in delinquency cases.[160] One defender told assessment team members: "It seems the standard of 'beyond a reasonable doubt' is lessened in juvenile cases" and the court and other stakeholders take a "would-services-help" approach instead of an "is-there-enough-evidence" approach.

The financial motivation is to 'stop the bleeding' of the cost of keeping a child detained.

A jurist in one jurisdiction stated that it was surprising there weren't more trials in juvenile court, because "it is a bench trial and arguments work, unlike with a jury." A range of factors can encourage high plea rates in delinquency court. Youth often face external pressures from system stakeholders and even family members to resolve matters quickly, and there is little discussion or acknowledgement of the barriers to education, housing, and employment that can occur as a result of juvenile court adjudications.[161] And in a state where delinquency defenders are not compensated for trial preparation, it is no surprise there are so few trials.

Assessment team members observed seven juvenile plea hearings across four counties and highlighted plea hearings in which effective juvenile defense advocacy was observed. In one of these hearings, assessment team members reported that the attorney, who was "very well prepared and engaged," was the only person who could accurately relay the details of a key fact that both the juvenile court counselor and the district attorney had misstated. In another hearing, the attorney was also "very well prepared," spoke to the child (who was bilingual) and the family in Spanish during the hearing, and displayed strong advocacy on behalf of the child during the disposition phase that immediately followed the plea.

But there were also concerns expressed by court observers about youth not being well-prepared for their plea hearings, youth not understanding what was happening during the proceedings, and the level of juvenile defense advocacy generally. Assessment team members reported that in one of the plea hearings, the court conducted a "fairly standard" plea colloquy, adding, "it seemed like just another case to the attorney, and the youth seemed unprepared to answer questions posed by the court." Attorneys who do not prepare their clients in advance for court's questions during the plea hearing are failing to properly provide "the guiding hand of counsel" that *Gault* intended.[162]

Assessment team members reviewed juvenile court plea forms from around the state and noted that the forms were different in every jurisdiction and that very few used terms and language children might understand. One attorney, who sometimes represented youth on appeal as well as at the trial level, expressed concern to the assessment team that in one jurisdiction, defenders were expected to sign the plea form with the child. This puts attorneys in an untenable position should a client seek to challenge or withdraw their plea in the future.

160 *See In re* Winship, 397 U.S. 358, 368 (1970); Or. Rev. Stat. § 419C.400(1)-(2) (2007).
161 *To Plead or Not to Plead*, *supra* note 154.
162 *See In re* Gault, 387 U.S. 1, 37 (1967).

Assessment team members were particularly concerned about the fact that Oregon has no statewide juvenile court rules of procedure for delinquency proceedings, no statute in the juvenile delinquency code to guide courts' acceptance of children's admissions, and no rule of criminal procedure to govern the plea procedure in juvenile court. Indeed, when asked about the standard that governs entries of admission or the judicial colloquy for ensuring a young person understands the rights they are giving up, jurists offered a wide range of responses, from using a version of the "script that my judge used when I was a DA," to a "checklist" or "bench card." One jurist said there is just a conversation with the child "and their attorney to make sure they understand everything."

An attorney who sometimes represents youth in delinquency appeals was "not aware of any caselaw regarding guilty pleas in juvenile court" and confirmed that although jurists could follow the criminal rule, there was no statewide standard. A jurist explained: "We are operating in a law vacuum."

Juvenile defenders must have sufficient support and resources in place to act with diligence and zeal in advocating for every client. This includes systemwide commitment to actively trying cases where facts or laws are in dispute and encouraging defenders' meaningful advocacy at all phases of the court process.[163] Although the length of time a case could take to resolve may be a factor when a child decides whether to plea or proceed to trial, the best way to ensure justice and fairness is for counsel to fully investigate every case—notwithstanding the possible outcome—and proceed to trial when appropriate, in keeping with the client's expressed interests. Further, Oregon must provide guidance to juvenile courts across the state through uniform procedures designed to ensure that pleas in juvenile court measure up to state and federal constitutional requirements.

"We are operating in a law vacuum."

G. Disposition

Disposition planning should begin at the first meeting between defender and client. Good disposition planning can result in client-driven outcomes, more effective advocacy, better-informed plea negotiations, and more appropriate levels of system intervention. Disposition advocacy for youth must be based on thorough preparation with youth clients and, as much as possible within the contours of the attorney-client relationship, with the client's family. "The role of counsel at disposition is essentially the same as at earlier stages of the proceedings: to advocate, within the bounds of the law, [for] the best outcome available under the circumstances according to the client's view of the matter . . . ."[164]

The attorney should also be aware of all of the possible disposition options to discuss with the young person and identify the least restrictive possibilities.[165] To do this satisfactorily, the attorney must have the time to become familiar with the client's history, current goals and options, and the available programs, alternatives to placement, and collateral consequences of adjudication.[166] Counsel should discuss and explain to the child the disposition procedures, as well as any probation or commitment plans proposed by the prosecutor or probation officer.[167]

163 *See* Or. Bar Performance Standards, *supra* note 36, at Standard 1.1.
164 IJA-ABA Juvenile Justice Standards, *supra* note 38, at 179. *See also* National Juvenile Defense Standards, *supra* note 7, at Standards 1.1, 6.1.
165 National Juvenile Defense Standards, *supra* note 7, at Standards 6.2–6.5.
166 *Id.* at Standard 6.2.
167 *Id.* at Standard 6.3.

Defense counsel should be compensated for time spent working with their client to develop an independent disposition plan to present to the court, which advances the young person's goals for their future. "Counsel must also be prepared to challenge the prosecution's sentencing memorandum or disposition plan, if appropriate."[168] During the disposition hearing, the attorney must advocate for the client's wishes, challenging any recommendations submitted to the court that are adverse to the client's stated interests.[169]

After the hearing, the attorney must also explain the disposition order to the client, clarifying and emphasizing the court-ordered requirements, and informing the client of the potential consequences of not following the order.[170] The attorney must also advise the youth of the right to appeal a disposition.[171]

Although an investigation report[172] must be made available to all parties "at least 7 days before the dispositional hearing"[173] no defender or other stakeholder discussed this requirement with the assessment team. Assessment team members also learned that while most children in Oregon are represented at disposition, defenders infrequently provide zealous advocacy at the disposition hearing because the majority of cases end in pleas and the disposition is largely agreed upon, often in advance.

When defenders in the sites visited were asked how often they challenge the juvenile court counselor's recommendation at the disposition hearing, the majority reported that they regularly challenged some, but not all of the juvenile court counselors' (JCC) recommendations. Other stakeholders' responses reflected that defenders do not frequently challenge disposition recommendations in court—especially because most reported that agreed-upon dispositions were the norm across the state. Additionally, when jurists, JCCs, and district attorneys were asked how often defenders challenge the JCC's recommendation by offering an alternative disposition, more than half of respondents reported that defenders rarely proposed alternatives, with none reporting that defenders offered the court written disposition plans.

Assessment team members learned that most often across the state, disposition hearings occurred immediately following the plea or adjudication. This means that in order to measure up to best practices for disposition representation, defense counsel must have a prepared disposition plan in advance of the plea hearing or trial. While one juvenile court counselor reported that some defenders do advocate at disposition, they also said that "some just show up and have a cookie cutter approach."

Jurists and district attorneys also shared their views on defender advocacy at disposition with assessment team members. One jurist explained that stronger defender advocacy would present much-needed alternative options: "Juvenile defense lawyers have to be more actively involved in the disposition process. I'm in a situation where the JCC is recommending out-of-home placement and I don't want that, but I need the lawyer to have another plan. The skill just isn't there post-adjudication."

A district attorney in another jurisdiction offered specific advice: "They never challenge probation. Never challenge uniform conditions of probation. It is easy to challenge, and courts have wide latitude." One defender told assessment team members that the strongest advocacy is reserved for children facing placement in the state's youth prison system: "I very rarely call witnesses, but will if there is a contested issue regarding OYA versus not OYA, then I will call a provider or an expert."

168 *Id.* at Standard 6.6.
169 *Id.* at Standards 6.5, 6.7.
170 *Id.* at Standard 6.8.
171 *Id.* at Standard 7.2.
172 Or. Rev. Stat. § 419C.300 (1993).
173 Or. Uniform Trial Court Rules, UTCR 11.060 (2015).

Two disposition hearings observed by assessment team members illustrated the differing levels of defense advocacy. In one hearing, the team member reported that the defender had clearly reviewed the disposition plan, which included placement in the youth prison, but did not object or make any arguments against the recommendation. There seemed to be "no real interaction" between the attorney and the young person, and the team member described the process as appearing "distant and robotic."

In another county, an assessment team member reported that there were positive aspects to the defender's advocacy, and found the defense was "very well prepared, knows the client, and clearly had advocated well before this hearing, which resulted in the young person not being given sex offender registry obligations."

In only one of the ten counties investigated did defenders and other stakeholders generally agree that defense advocacy—especially oral advocacy at the disposition hearing—occurs fairly regularly.

Disposition is a critical stage of practice in delinquency proceedings that can directly impact a young person's future success. Even when ardent disposition advocacy is not likely to achieve the client's desired result, it is important for young people to have advocates who demonstrate an interest in their future and provide a voice for them at disposition, while preparing them for all possible outcomes. "The active participation of counsel at disposition is often essential to protection of clients' rights and to furtherance of their legitimate interests. In many cases, the lawyer's most valuable service to clients will be rendered at this stage of the proceedings."[174]

Oregon's youth deserve to have defense counsel who are afforded the time and opportunity to listen to them, advise them, and work with them to build a plan that moves them toward success and away from the court. This client-driven disposition plan must be presented to the court and given the time and consideration required for fair and effective deliberation. Anything less compromises the rights of children to effective representation at delinquency proceedings.

H. Post-Disposition

The post-disposition phase of a case is often the longest period of court intervention in the lives of youth and families. It is critical that youth retain access to counsel while on probation and especially while they are in facilities away from their family and community. An attorney can make sure a youth's rights and interests are served and that legal obstacles to the youth's success are addressed while they are under continuing juvenile court jurisdiction.

Attorneys can also offer support, advice, and encouragement to the youth and monitor whether court-ordered services are being provided and are appropriate. Attorneys should also ensure that when the client is placed outside of their home, they are safe and not subject to harmful or abusive conditions.[175] When youth have been removed from their home and community, their attorney can facilitate a smoother transition back home by assisting in securing desired ongoing services, easing the reentry to school by ensuring educational records and credits are transferred, and working with the youth and their family to address other related issues.

174 IJA-ABA Juvenile Justice Standards, *supra* note 38, at 89.
175 National Juvenile Defense Standards, *supra* note 7, at Standard 7.5.

In Oregon, children must receive appointed counsel in certain post-disposition proceedings, including "at a hearing concerning an order of probation,"[176] in any case in which the youth would be entitled to appointed counsel if they were an adult charged with the same offense,[177] at a hearing regarding youth sex offender reporting,[178] and on appeal.[179] The juvenile code also provides a catchall, allowing the court to appoint counsel "in any other proceeding under the jurisdiction of the juvenile court,"[180] which could conceivably include nearly any post-disposition hearing in which court intervention is deemed necessary.

In addition to hearings listed above, children may appear before the court for de novo review of a referee's order,[181] modification or "set-aside" proceedings, including modification of disposition orders of youth committed to state custody,[182] habeas corpus,[183] and expunction hearings.[184] Unless a juvenile court specifies otherwise and in writing, "an order for appointment of counsel shall expire when the time for taking an appeal has expired."[185]

There is also potential for post-disposition advocacy in cases that involve restitution. In Oregon, youth who are required to pay restitution may file a motion requesting satisfaction of the judgement if at least 50 percent of the ordered amount is satisfied or at least ten years have passed, and they have substantially complied with their payment plan, have not subsequently been found delinquent, and have satisfactorily completed probation or parole for the act relating to the restitution order.[186]

To ensure that youth receive adequate due process protections, national standards require that counsel continue representation after a youth is adjudicated and placed on probation or committed to the jurisdiction of the court or a state agency.[187] Oregon practice standards also recommend that, "A lawyer for a youth in delinquency proceedings should stay in contact with the youth following disposition and continue representation while the youth remains under court or agency jurisdiction," and should continue to advocate on behalf of youth clients after disposition.[188]

Assessment team members discovered two main concerns relating to post-disposition: whether youth had meaningful access to their attorney for issues arising after disposition and the quality of representation at the post-disposition hearings that did occur.

176 Or. Rev. Stat. § 419C.200(1)(a)(B) (2018).
177 Or. Rev. Stat. § 419C.200(1)(a)(C) (2018).
178 Or. Rev. Stat. § 163A.030(4)(a) (2020).
179 Or. Rev. Stat. § 419A.211(1) (2012).
180 Or. Rev. Stat. § 419C.200(1)(a)(D) (2018).
181 Or. Rev. Stat. § 419A.150(4)-(8) (2003).
182 Or. Rev. Stat. § 419C.610(1)-(2) (2001); Or. Rev. Stat. § 419C.613 (2003); Or. Rev. Stat. § 419C.615 (2001) (noting also that a court's decision granting or denying such a request is subject to appeal by either party); Or. Rev. Stat. § 419C.617 (2001) (providing time limitations for set-aside or modification requests for certain adults); Or. Rev. Stat. § 419C.626 (2019), Or. Rev. Stat. § 419C.653 (2008) (providing for review or modification of order committing a youth to OYA).
183 Or. Rev. Stat. § 419C.013 (1995).
184 Or. Rev. Stat. § 419A.262 (2015); Or. Rev. Stat. § 419A.265 (2017).
185 Or. Uniform Trial Court Rules, UTCR 11.020 (2006).
186 Or. Rev. Stat. § 419C.450(5)-(8) (2008).
187 National Juvenile Defense Standards, *supra* note 7, at Standards 1.4, 7.1, 7.5; IJA-ABA Juvenile Justice Standards, *supra* note 38, at 91.
188 Or. Bar Performance Standards, *supra* note 36, at Standard 9.5. *See also* Or. Bar Performance Standards, *supra* note 36, at Standard 6.1 (Implementation 9) (providing that a lawyer should seek to mitigate the "minimum and maximum fines and assessments [and] court costs that may be ordered...").

Some states have legislated that attorneys have a continuing obligation to represent youth while under the jurisdiction of the juvenile court system.[189] While Oregon arguably provides the right to counsel at all post-disposition proceedings, assessment team members learned that in most jurisdictions, defenders are often reappointed only for select hearings such as probation violation hearings, review hearings, and youth sex offender classification and registry removal hearings. In some jurisdictions, defenders emphasized that because their appointment generally ends at disposition, their post-disposition advocacy, beyond the instances when they are reappointed for probation violation hearings is relatively rare.

Notably, not a single defense attorney or any other stakeholder discussed restitution hearings as an important post-disposition opportunity for advocacy or noted that restitution was subject to post-disposition modification or forgiveness.[190]

More troubling was assessment team members' discovery that because most children did not have appointed counsel throughout the post-disposition stages of their cases, defenders were largely unaware of instances when post-disposition motions needed to be filed. As one defender told assessment team members, the reality is that "kids can't always find their way back to us." Without being appointed, it is impossible for defenders to advocate on behalf of youth.

A juvenile court counselor expressed similar concern: "Sadly, this is where the kids lose their voice in court because there aren't many hearings and the lawyers are only reappointed if there's a violation." Attorneys relayed to assessment team members that their OPDS contract generally prevented ongoing representation, but because some judges will set regular disposition review hearings, some youth receive ongoing representation in select cases in those jurisdictions.

"This is where the kids lose their voice in court."

In one county, assessment team members discovered a troubling trend that young people were often unrepresented at probation violation hearings because, as court officials explained, "juvenile defenders are automatically withdrawn upon completion of disposition, so they do not do any additional post-disposition advocacy" unless the child requested that counsel be provided for the hearings. Court officials and other stakeholders in that jurisdiction reported that this may occur because the court assessed a fee for reappointing counsel.

In the remainder of jurisdictions visited, most stakeholders reported that courts make every effort to reappoint the same attorney for youth for probation violation review hearings. But, because such policies have not been mandated or formalized statewide, whether children are represented by the same attorney every time they are before the court varies from county to county and case to case.

Many defenders across the state reported that they do not maintain regular contact with clients after disposition. Other stakeholders recognized defenders faced some barriers to maintaining contact. One juvenile court counselor told assessment team members "there really isn't a structure in place" for them to do so. A court counselor in another jurisdiction explained that even though defenders are not paid for post-disposition contact with clients, "some are going out on their own and using their own money to see the kids."

189 *E.g.*, Ky. Rev. Stat. § 31.110(3) (2015); Ohio Rev. Code § 2151.352 (2005); Ohio R. Juv. Proc. 4, 35. *See generally* Nat'l Juvenile Defender Ctr., Addressing the Legal Needs of Youth After Disposition (2013), http://njdc.info/wp-content/uploads/2014/01/Post-Dispo-Inno-Brief-2013.pdf.

190 *See* Or. Rev. Stat. § 419C.450(5)-(8) (2008).

Post-dispositional defense should be a routine part of representing young people,[191] not an act of grace by individual lawyers. Oregon's juvenile defense system should ensure that attorneys can provide the type of post-disposition advocacy recommended by national and its own state standards.

When asked about the quality of representation at post-disposition hearings that may occur, many stakeholders expressed that representation would be much stronger if defenders could be in contact more regularly with their clients and work with JCCs before probation violations were filed, rather than after the fact.

Representation would be much stronger if defenders could be in contact more regularly with their clients.

Assessment team members did observe some positive interactions between defenders and their clients at post-disposition hearings before the court, as well as a few instances that reflected good preparation.

The assessment team reported that in one county, a defender made child-focused arguments: "The attorney made a nice recitation of the client's strengths, including that the client 'has a calming influence on other residents'" and seemed to have generally prepared the client for the hearing. In another hearing in that county, the assessment team reported that the defender successfully advocated for a program the juvenile department opposed and "seemed to have a really good relationship with the family."

Other post-disposition hearing observations, however, painted a different picture, with assessment team members generally describing probation violation hearings they observed as "perfunctory" and without much participation by the clients or their attorneys. In one notable hearing, assessment team members observed that the juvenile department requested an extension of probation for a young person who was struggling to complete the terms of probation. During the hearing, the district attorney, the juvenile court counselor, and the referee talked with each other over the child, who seemed to assessment team members to be dumbfounded by the possibility of detention and was not invited to participate. The child's father spoke in support of the child, but assessment team members observed that the defender "half-heartedly asked that the youth be released to work detail, if available," and "walked out of court after the hearing with the child's father, saying nothing to the young client." Assessment team members reported that the attorney "was not at all prepared to proactively offer positives" or relay the client's strategy in support of the client's desired outcome.

191 NCJFCJ Juvenile Justice Guidelines, *supra* note 39, at ch. IX, 6-12, ch. X, 8-10.

In another hearing, assessment team members observed the juvenile court counselor and mother criticizing the client without objection, mitigation, or any advocacy from the child's attorney. After the child was found to be in violation, the juvenile court counselor asked for detention time. The defender did not offer any information or argument in support of the child, but instead seemed to side with the juvenile court counselor and against the client, saying to the court, "oftentimes, detention brings clarity."

Oregon's juvenile defense system must standardize the practice of affording meaningful access to counsel for youth to ensure continuous and effective representation for children after disposition. Juvenile defenders should provide and be compensated for ongoing communication with their clients, and should be appointed and advocate zealously on behalf of their clients at all post-disposition review hearings, including probation violation hearings, disposition modifications and set-asides, review hearings, and other post-disposition proceedings.

I. Appeals

A well-functioning juvenile defense system supports appeals for youth: "A robust and expeditious juvenile appellate practice is a fundamental component of a fair and effective juvenile delinquency system."[192] Adjudications have long-term consequences and may have important implications for plea negotiations or sentencing if a child is arrested in the future.[193]

The discussion with a child about their right to appeal should occur early in the representation and throughout the case. Attorneys must explain not only potential appellate issues to their clients as the case progresses, but also the factors the client should consider in deciding whether to appeal.[194] For a child who wishes to appeal, juvenile defenders must file appropriate notices of appeal and either represent the client themselves or arrange for other representation.[195]

While Oregon unequivocally provides children the right to appeal and the right to appointed counsel on appeal,[196] in most counties, juvenile appeals are seldom filed. Stakeholders reported to assessment team members that there are a few appeals in some jurisdictions, but none in most.

A review of the state's 23 delinquency appellate decisions from January 1, 2016 through January 1, 2020 revealed that there were no delinquency appeals from 26 of Oregon's 36 counties.[197] Six of the counties in which youth cases were appealed had one to two cases each, and the remaining four counties had three or four appeals each. The appeals decided statewide in this period were handled by a total of eight attorneys.

192 Nat'l Juvenile Defender Ctr., Appeals: A Critical Check on the Juvenile Delinquency System 2 (2014), https://njdc.info/wp-content/uploads/2014/10/Appeals-HR-10.4.14.pdf.
193 Megan Annitto, *Juvenile Justice on Appeal*, 66 U. Miami L. Rev. 671, 701-04 (2012).
194 National Juvenile Defense Standards, *supra* note 7, at Standard 7.3; Or. Bar Performance Standards, *supra* note 36, at Standard 9.3.
195 IJA-ABA Juvenile Justice Standards, *supra* note 38, at 92.
196 Or. Rev. Stat. § 419A.211(1) (2012); Or. Rev. Stat. § 419A.200(1) (2014); Or. Rev. Stat. § 419C.285(2)(d) (2015).
197 Amanda J. Powell, *Oregon Assessment Appeals Data* (Feb. 19, 2020) [hereinafter *Oregon Assessment Appeals Data*] (unpublished spreadsheet) (on file with author).

Appeals of delinquency cases are rare.

Stakeholders across the ten counties visited were aware that appeals of delinquency cases are rare. When explaining this dearth of appeals for youth in Oregon, one defender pointed to attorney inaction: "How it is supposed to work is that if a kid wants to appeal, then you file the appeal. Most attorneys don't do it that way, though." One defender expressed concern that the low number of appeals could be attributed to the inability to access counsel on appeal, saying: "the appeals process for children is terrible compared to adults—for adults, the attorney merely sends a referral to the state appellate defender division, but for juveniles, it is harder to find representation for appeal."

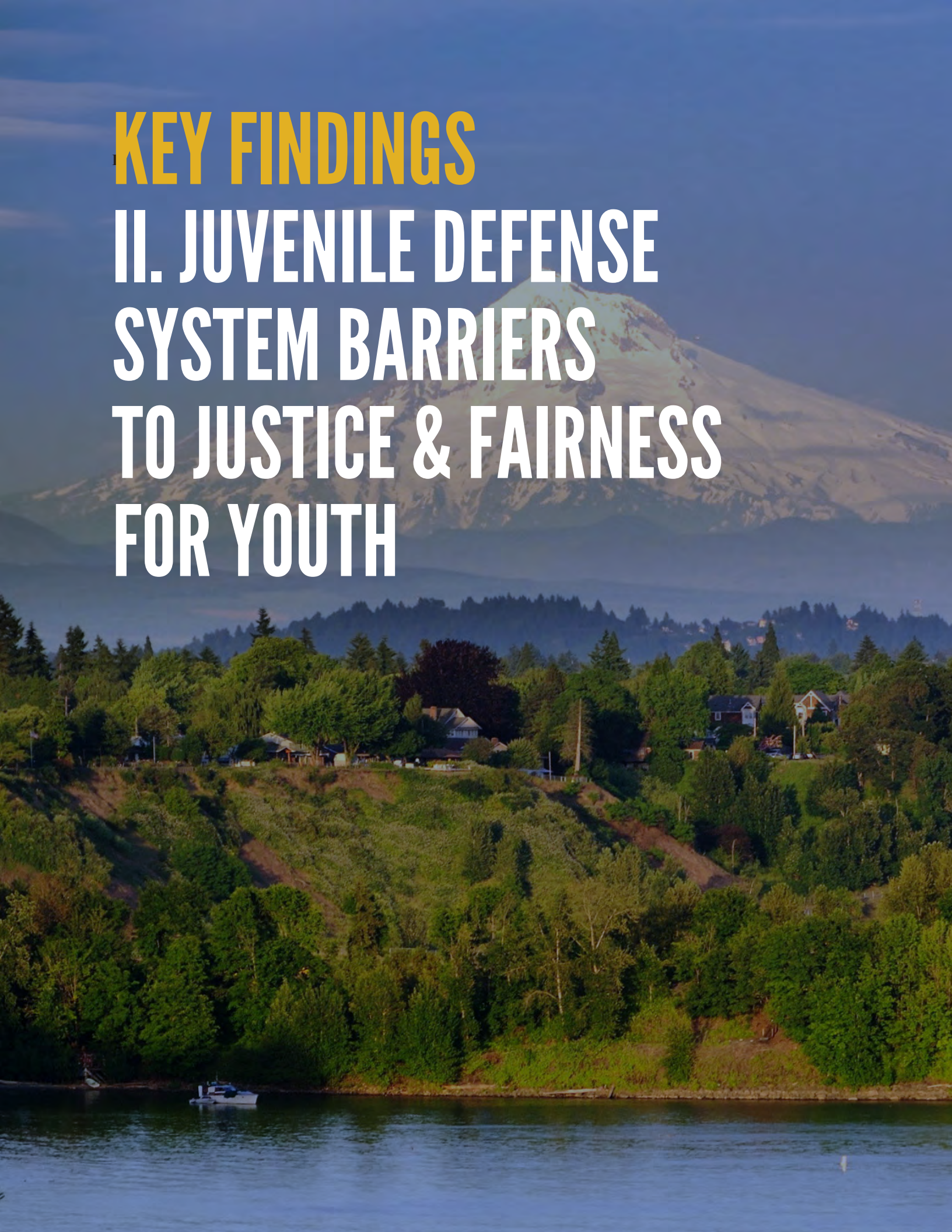
"Appeals play a unique role in the delinquency context, even beyond providing for accuracy and integrity in the conclusions; they are often the only vehicle for public accountability and transparency."[198] Appeals are the only check to ensure the legal system is functioning lawfully.

Juvenile courts and juvenile defense systems must dedicate more time and resources to this important aspect of juvenile defense, to ensure that youth understand and can exercise their right to appeal and receive specialized, well-resourced representation on appeal. When juvenile court decisions go unchecked in the vast majority of counties, it is hard to determine if young people in Oregon are being afforded the fundamental guarantees of due process.

198 Annitto, *supra* note 193, at 18.

KEY FINDINGS

II. JUVENILE DEFENSE SYSTEM BARRIERS TO JUSTICE & FAIRNESS FOR YOUTH



II. JUVENILE DEFENSE SYSTEM BARRIERS TO JUSTICE & FAIRNESS FOR YOUTH

Beyond the successes and challenges with access to and quality of juvenile defense counsel at the various stages of the proceedings, there are systemic issues that affect how and when youth receive and experience representation in juvenile court. A robust system of juvenile defense to protect the rights of youth requires leadership, oversight, specialization, training, and pay and resource parity. All young people in Oregon should receive the benefit of juvenile practice built on those foundational elements.

A. Leadership, Oversight, & Enforcement of Standards

The Public Defense Services Commission (PDSC) is an independent state agency in the judicial branch that governs the Office of Public Defense Services (OPDS).[199] The commission's primary responsibility is to establish and maintain the state's public defense system through OPDS, which oversees management of the public defense system, providing counsel to indigent adults and children in Oregon's trial and appellate courts and processing payments for fees and expenses concerning such representation.[200]

In its recent report examining Oregon's public defense system, the Sixth Amendment Center outlined problems in Oregon's public defense system, including onerous bureaucracy, lack of oversight over appointed attorneys, low pay, high caseloads, and pervasive conflicts in the state's flat-fee compensation structure, all of which likely render the system unconstitutional.[201]

While the Sixth Amendment Center report focused on the adult defense system, it highlighted a problem that is particularly relevant to the juvenile defense delivery system: the lack of meaningful leadership provided to defenders by PDSC and OPDS.

PDSC requires attorneys appointed to represent financially eligible adults and children to meet minimum standards.[202] Appointed attorneys must be an "active member of the Oregon State Bar;" agree to provide "competent representation to each client" and not "accept caseloads that . . . interfere with providing competent representation to each client or lead to the breach of professional obligations;" meet specific minimum qualifications for each type of case they accept, possess the skill and experience to meet or exceed the minimum qualifications, or work under the supervision of a lawyer who does; have "adequate support staff and regularly monitored email and telephone systems" and "an office or other regularly available and accessible private meeting space other than at a courthouse;" and "have read, understood and agree to observe applicable provisions of the current edition of the Oregon State Bar's Performance Standards for Counsel in Criminal, Delinquency, Dependency, Civil Commitment, and Post-Conviction Relief Cases . . . ."[203]

199 Or. Rev. Stat. § 151.213 (2003); Or. Rev. Stat. § 151.219 (2003). *See also About Us*, Or. Office of Pub. Def. Servs., https://www.oregon.gov/opds/Pages/about.aspx (last visited May 5, 2020).
200 *See About Us*, Or. Office of Pub. Def. Servs., https://www.oregon.gov/opds/Pages/about.aspx (last visited May 5, 2020).
201 *See* The Right to Counsel in Oregon, *supra* note 10, at I-IV, 170-171.
202 Pub. Def. Servs. Comm'n, Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense (2016), https://www.linnbentonbar.com/file_download/74. (last visited July 16, 2020)
203 *Id.*

The general terms of PDSC's standard public defense services contract require counsel to fulfill state and national standards of performance, including "those of the Oregon State Bar, American Bar Association, National Juvenile Defender Center and National Legal Aid and Defender Association."[204] Oregon Bar Standards recognize that delinquency representation requires special knowledge and skill and recommends that lawyers who represent youth in delinquency cases "should be familiar with and follow the National Juvenile Defender Center's National Juvenile Defense Standards,"[205] but there is no oversight or enforcement of these provisions by OPDS.[206]

There are several problems with these requirements and the lack of oversight and control to enforce them. First, "an attorney does not have to have any qualifications, experience, or skill, so long as they work under the supervision of an attorney who does," which means that it is up to an individual attorney or their employer to ensure the requirements have been met.[207] Contractors who apply for the first time to OPDS must certify that each attorney in the proposal meets OPDS's qualifications, but there is no such requirement for renewals.[208] There is frequent turnover amongst attorneys subject to these contracts, and there is scant monitoring of attorneys' qualifications after the initial contract period.[209]

Defenders who spoke about delinquency standards to the assessment team members did so with great candor. One defender explained, "We have state bar performance standards for criminal and delinquency that are aspirational and it is part of our contract that we comply with those standards, but we all fall far short of standards." A defender in another jurisdiction told assessment team members, "I think there are standards, but I haven't seen them." Another defender cited difficulties with the system structure as a barrier to meeting standards of representation: "With the number of cases and the level of funding, we simply can't meet the standards."

"With the number of cases and the level of funding, we simply can't meet the standards."

Although Oregon has adopted a similar expressed-interest advocacy standard in both delinquency and dependency cases, the role of a defense attorney defending against an alleged violation of the law requires vastly different knowledge and skills. The Oregon State Bar Association recognizes that representation in delinquency and criminal cases share similar features and promulgated Standards of Representation in Criminal and Juvenile Delinquency cases[210] that are wholly separate from its Specific Standards for Representation in Juvenile Dependency Cases.[211]

In addition to state and national practice standards, attorneys defending children in delinquency proceedings are bound by the Oregon Rules of Professional Conduct calling for expressed-interest representation.[212] And in Oregon's dependency standard, the expressed-interest mandate only applies to children deemed to have full decision-making capacity, [213] unlike in delinquency, where all youth facing prosecution have the right to an expressed-interest advocate.

204 *See* Or. Office of Pub. Def. Servs., Public Defense Legal Services Contract General Terms Section 7.1.1 p. 13 (2019), https://www.oregon.gov/opds/provider/ModelContractTerms/ModKJan2018.pdf (referencing National Juvenile Defense Standards, *supra* note 7).
205 Or. Bar Performance Standards, *supra* note 36, at Standard 1.1 (Implementation 2).
206 The Right to Counsel in Oregon, *supra* note 10, at 108.
207 *Id.*
208 *Id.* at 110.
209 *Id.*
210 *See generally* Or. Bar Performance Standards, *supra* note 36.
211 *See* Or. State Bar, Specific Standards for Representation in Juvenile Dependency Cases 3 (2017) [hereinafter Specific Standards For Representation], https://www.osbar.org/_docs/resources/juveniletaskforce/JTFR3.pdf.
212 *See generally* Role of Juvenile Defense Counsel, *supra* note 26; Or. Bar Performance Standards, *supra* note 36, at Standard 1.1.
213 Specific Standards for Representation, *supra* note 211, at 3 (citing Or. Rules of Prof. Conduct, Rule 1.14).

Despite most juvenile practice attorneys spending the majority of their time on dependency cases, defenders and other stakeholders communicated to assessment team members a basic understanding that in delinquency representation, the defender's role is that of an expressed-interest advocate.

Given the absence of oversight from PDSC and OPDS, it is not surprising that stakeholders in a few jurisdictions expressed concern about role confusion between delinquency and dependency representation. For example, one jurist reported, "attorneys do not recognize that they should not be making overall best-interest-of-the-client arguments [and] most are acting in best interest—[defenders] have an expectation that they want to see the same rehabilitation goals for their client as the court and the tendency is for them to step outside their ethics to make sure the kids are protected from themselves." A defender in another jurisdiction shared that many juvenile practitioners conflate the roles and responsibilities of the defender in delinquency versus dependency representation.

Leadership and oversight are essential to a fair and just juvenile court system. "Recognizing juvenile defense as a specialized practice necessitates an institutional framework with a management and support structure, which in turn provides defenders with training, feedback, evaluation, promotion, and leadership opportunities within the juvenile indigent defense system."[214]

Oregon must provide adequate mechanisms for oversight and enforcement of the juvenile defense-specific performance standards and ethical mandates to ensure that youth receive well-trained, qualified, and effective counsel who defend their stated interests and rights at every phase of proceedings against them.

PDSC and OPDS have laid the groundwork by promulgating minimum qualifications and best practices and adopting state and national standards of representation for those representing young people in delinquency cases. But without oversight and enforcement, there is no way to ensure quality representation for young people across the state.

B. Specialization & Training

Delinquency cases involve a unique body of law, and outcomes have significant, lifelong implications for youth and their families. Public defense systems must ensure compliance with ethical mandates to advance the interests and rights of youth and uphold the due process protections mandated by *Gault*.[215] Additionally, public defense delivery systems must prepare attorneys to defend young people who do not possess the same cognitive, emotional, or behavioral capacities as their adult counterparts, and require counsel to be trained to understand adolescent development and the unique aspects of defending youth.[216]

Oregon must meet its constitutional obligation to ensure that youth have access to effective counsel in delinquency proceedings. The framework is in place, in that OPDS requires minimum qualifications and adherence to state and local standards of performance. But without a system of monitoring and enforcement, as well as a commitment to developing expertise and providing ongoing opportunities for juvenile defenders to learn and hone delinquency-specific defense skills, the promise of *Gault* will remain unfulfilled.

214 National Juvenile Defense Standards, *supra* note 7, at 8. *See also* National Juvenile Defense Standards, *supra* note 7, at Standards 9.1, 9.3, 9.4, 10.1.
215 *In re* Gault, 387 U.S. 1, 30 (1967).
216 Ten Core Principles, *supra* note 8, at 1.

1. Specialization

Juvenile defense specialization is essential to providing adequate delinquency defense to youth.[217] Juvenile defenders owe their young clients the same duty of loyalty as adult criminal clients.[218] In order to meet their obligation to maximize each client's participation in their own case, counsel must ensure their youth client understands the court process, as well as specific aspects of their case, including the full range of disposition options and collateral consequences of adjudication.[219]

Even if there are not enough delinquency cases in a jurisdiction to justify attorneys specializing in juvenile defense, any attorney who represents a young person in a delinquency matter should have expertise in the practice. One defender told the assessment team, "It would be really cool to have a statewide juvenile defender office to improve the quality of representation, [improve] recruiting practices, and to provide standards, oversight, and resources."

Many defenders expressed to assessment team members that because the pay for delinquency representation is so low, they have no choice but to accept appointments on other types of cases.

The vast majority of defenders interviewed for this report told assessment team members they carried a mixed caseload of dependency and delinquency, with more dependency than delinquency. Some reported they handled a mix of delinquency, dependency, and criminal cases; some handled delinquency, dependency, parent representation, criminal, and civil; and very few—only two, in fact—said they took on a mix of delinquency and criminal, including youth cases that were transferred to adult court.

While some defenders emphasized benefits of practicing in delinquency and dependency court, such as more familiarity with placement options and available services, others expressed that it can lead to role confusion and an emphasis on treatment rather than legal advocacy. One attorney put it simply, "when the defense role is clear, it is next to impossible to do dependency and delinquency—you can't do both."

"It would be really cool to have a statewide juvenile defender office to improve the quality of representation."

However, because Oregon's dependency representation task force recommended that OPDS should implement, where practicable, "that a one-lawyer-one youth model is the general practice in crossover cases,"[220] defenders and defender offices across the state do not specialize in either delinquency or dependency, but must represent young people in both areas of practice.

217 National Juvenile Defense Standards, *supra* note 7, at 8-9.
218 Or. Rules of Prof. Conduct, Rule 1.1 (2005).
219 Ten Core Principles, *supra* note 8, at 2.
220 Or. Task Force on Dependency Representation, Report July 2016 7 (2016), https://www.oregon.gov/gov/policy/Documents/LRCD/Oregon_Dependency_Representation_TaskForce_Final_Report_072516.pdf.

Further, in many places in Oregon, specialized delinquency practice is simply not possible. Seven of Oregon's 36 counties' population total fewer than 8,000 people, and in three of these counties, the population is less than 2,000.[221] According to the state's 2018 data, none of these counties' courts had more than 18 youth referrals for law violations, and three counties received referrals for fewer than four youth for the entire 2018 reporting period.[222]

But even where exclusive delinquency practice is not possible, juvenile defense must be recognized as a specialized area of legal practice that requires expertise, adherence to specialized standards of representation, and ongoing training. Oregon must ensure that every young person in the state has equal access to a well-qualified and well-supported juvenile defender.

2. Training

Delinquency defense is a specialized practice that demands specialized training.[223] Oregon's performance standards require that a "lawyer practicing criminal or juvenile delinquency law should complete at least 10 hours of continuing legal education training in criminal and delinquency law each year."[224]

Despite these guidelines, very few defenders reported having access to any specialized training before accepting delinquency cases, and most believed there is a requirement for youth-specific training, but believed there is no requirement that it be for either delinquency or dependency, despite the clear language of the standards. Because the bulk of most defenders' cases are dependency, attorneys regularly admitted that dependency is where their training focus lies.

One jurist explained to assessment team members: "I think that defense attorneys and prosecutors could benefit from more ongoing training—you have lawyers that have been doing this for a long time and, without ongoing training, patterns start to develop where the lawyers are forgetting steps in procedures, motions, and cutting corners. . . . I think they get too comfortable and sometimes handle cases too casually."

221 *Oregon Counties by Population*, Or. Demographics by Cubit, https://www.oregon-demographics.com/counties_by_population (last visited May 5, 2020) (reporting that according to 2017 census estimates the population totals for Oregon's least populous counties—Lake, Harney, Grant, Wallowa, Gilliam, Sherman, and Wheeler—were 7,897; 7,329; 7,176; 7,081; 1,894; 1,708; and 1,366 respectively.).

222 Juvenile Justice Info. Sys. Steering Comm., Data & Evaluation Report Youth and Referrals (2018) [hereinafter Youth and Referrals], https://www.oregon.gov/oya/jjis/Reports/2018StatewideYouthReferrals.pdf (last visited July 16, 2020) (reporting that 6,931 youth were referred for criminal acts in the 2018 reporting period). See also Juvenile Justice Info. Sys. Steering Comm2018), https://www.oregon.gov/oya/jjis/Reports/2018LakeYouthReferrals.pdf (last visited July 16, 2020) (reporting 18 youth referred); Juvenile Justice Info. Sys. Steering Comm., Data & Evaluation Report Youth and Referrals Harney County (2018), https://www.oregon.gov/oya/jjis/Reports/2018HarneyYouthReferrals.pdf (last visited July 16, 2020) (reporting 10 youth referred); Juvenile Justice Info. Sys. Steering Comm., Data & Evaluation Report Youth and Referrals Grant County (2018), https://www.oregon.gov/oya/jjis/Reports/2018GrantYouthReferrals.pdf (last visited July 16, 2020) (reporting 12 youth referred); Juvenile Justice Info. Sys. Steering Comm., Data & Evaluation Report Youth and Referrals Wallowa County (2018), https://www.oregon.gov/oya/jjis/Reports/2018WallowaYouthReferrals.pdf (last visited July 16, 2020) (reporting 15 youth referred); Juvenile Justice Info. Sys. Steering Comm., Data & Evaluation Report Youth and Referrals Gilliam County (2018), https://www.oregon.gov/oya/jjis/Reports/2018GilliamYouthReferrals.pdf (last visited July 16, 2020) (reporting 2 youth referred); Juvenile Justice Info. Sys. Steering Comm., Data & Evaluation Report Youth and Referrals Sherman County (2018), https://www.oregon.gov/oya/jjis/Reports/2018ShermanYouthReferrals.pdf (last visited July 16, 2020) (reporting 3 youth referred); Juvenile Justice Info. Sys. Steering Comm., Data & Evaluation Report Youth and Referrals Wheeler County (2018), https://www.oregon.gov/oya/jjis/Reports/2018WheelerYouthReferrals.pdf (last visited July 16, 2020) (reporting 1 youth referred).)

223 National Juvenile Defense Standards, *supra* note 7, at Standards 1.3, 9.2.

224 Or. Bar Performance Standards, *supra* note 36, at Standard 1.2 (Implementation 3).

Several defenders reported that the Oregon Criminal Defense Lawyers Association's delinquency training is not easily accessible. And although there are a couple of delinquency-specific offerings each year, often as part of a larger family law conference, there are simply not enough opportunities for training related specifically to delinquency defense. Oregon should provide increased statewide and regional opportunities for all juvenile defense attorneys to participate in meaningful and intensive training on relevant issues facing children and adolescents in the juvenile delinquency system.

Oregon should also implement a train-the-trainer program to develop a cadre of lawyers who can offer juvenile delinquency defense training and enhance and sustain training and skills development. Oregon should adopt specific training requirements for all defenders who practice in delinquency proceedings and establish mechanisms for monitoring compliance with these requirements.[225]

C. Pay Parity

National standards call for resource and pay parity between the prosecution and defense in adult[226] and juvenile cases.[227] A system that provides fewer resources and lower pay for defenders than prosecutors devalues the constitutional rights of all citizens. Moreover, when there are disparities between what juvenile defense attorneys are paid compared to their adult counterparts, it indicates that juvenile defense practice is less important. Low pay incentivizes attorneys to either eschew juvenile defense in favor of other opportunities or to provide less complete representation in youth clients' cases.[228]

In Oregon, the disparities in pay between defenders and prosecutors is well known. "The defense lawyers paid with public money to represent indigent clients make substantially less than the prosecutors sitting on the other side of the courtroom."[229] Although not an exact comparison, the highest paid staff attorney in the public defender's office in one county made just $2,888 more than the lowest paid prosecutor.[230]

Assessment team members learned that the landscape is even more bleak for juvenile defenders, one of whom explained, "under the OPDS contract, delinquency cases pay the lowest per credit, so any defender representing youth in delinquency cases has to also take dependency or adult criminal cases just to survive."

The bottom line as described to assessment team members is that "it is difficult to keep attorneys long term" and "the lack of sustainability leads to attorneys feeling burned out." In the end, youth whose liberty is at stake pay the price.

In the end, youth whose liberty is at stake pay the price.

225 *E.g.*, *id.*; National Juvenile Defense Standards, *supra* note 7, at Standards 1.3, 9.2.

226 Am. Bar Ass'n, ABA Ten Principles of a Public Defense Delivery System, Principle 8 (2002), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf (providing "[t]here should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense").

227 Ten Core Principles, *supra* note 8, at 2-3.

228 *See* Defend Children, *supra* note 1, at 22-25 (Recommendation 3.1 calls for equal pay and promotion between juvenile and adult defense units); Nat'l Juvenile Defender Ctr. & Nat'l Ass'n. for Pub. Def., Juvenile Defense Self-Assessment Tool (2016), https://njdc.info/wp-content/uploads/2016/03/NAPD_IssueBrief_030416.pdf.; National Juvenile Defense Standards, *supra* note 7, at Standard 9.7.

229 Katie Shepherd, *Public Defenders Make Far Less Than Prosecutors. An Oregon Lawmaker Wants to Give Them a Raise*, Willamette Week, (Oct. 24, 2018), https://www.wweek.com/news/courts/2018/10/24/public-defenders-make-far-less-than-prosecutors-an-oregon-lawmaker-wants-to-give-them-a-raise/. (last visited July 16, 2020) *See also* The Right to Counsel in Oregon, *supra* note 10, at 170-71 (outlining the imbalance between prosecutors and public defense attorneys in Oregon).

230 *See* Shepherd, *supra* note 229.

Assessment team members also noted a difference in staffing and resources available to perform standard tasks like investigation. When comparing themselves to attorneys in more traditional public defender offices, consortium and individual attorneys reported feeling alone in that respect. As one of these attorneys described it, "some disadvantages we have that the public defenders don't is that we don't have in-house social workers, mitigation specialists, investigators, and psychologists, so we have to make the request to [OPDS] and that delays the case."

Oregon has an obligation to treat youth in the delinquency system with dignity, respect, and, above all, fundamental fairness. The contracts for juvenile defenders must include compensation for all facets of representation from investigation to post-disposition.[231] To that end, Oregon must allocate sufficient resources so that juvenile defenders across Oregon can give all young people the level of representation they deserve.

D. Case & Data Management

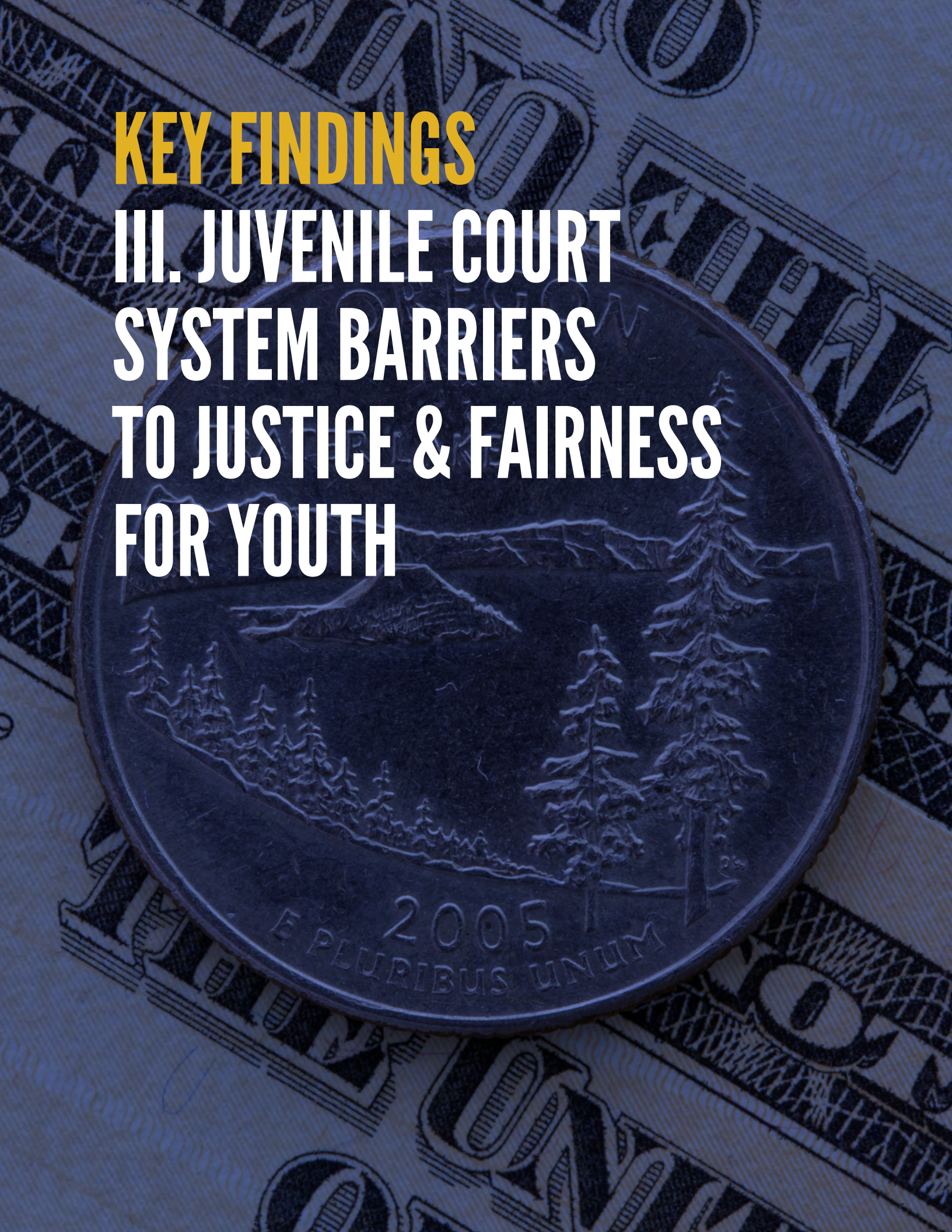
Many defenders reported having either no case and data management system or little information about their in-house system, if one existed. Others reported having in-house systems in place for case tracking, conflicts checking, and biennial contract negotiation with OPDS. A few defenders reported that there had been some discussion and even excitement about implementing a statewide case management system for delinquency practice.

In a state as rich in data as Oregon, and with OPDS's unique oversight potential, every juvenile defender or juvenile defender office or organization should have the capacity to collect and routinely analyze data so that best practices, litigation innovations, and policy reforms can be promoted. A comprehensive case and data management system could provide anonymized data to be used in delinquency case advocacy and a statewide motions and brief bank to support delinquency expertise.

Oregon should implement the use of a centralized data system that will provide case management and document storage, with adequate protections to ensure conflict-free representation and confidentiality to all juvenile defense attorneys providing representation in delinquency cases. A centralized data system should collect data on key defense quality metrics, such as requests for discovery; procedural and substantive motions filed; trials sought versus cases pleaded; case outcomes; the use of defense team personnel, such as social workers, investigators, and experts; and post-disposition representation, including appeals or expungement information.

It does not appear that Oregon court administrative data includes information on whether and when youth have access to counsel in delinquency cases or waive counsel. OPDS leadership should advocate for the collection of such data and ensure a defender case management system is enabled to cull administrative court data on access to counsel and access to no-cost counsel for youth. A case management system with specific delinquency information will help ensure fidelity to uniform standards of representation.

231 Nat'l Juvenile Defender Ctr., Broken Contracts: Reimagining High-quality Representation of Youth Contract and Appointed Counsel (2019), https://njdc.info/wp-content/uploads/NJDC_Broken_Contracts-Report-WEB.pdf.



KEY FINDINGS

III. JUVENILE COURT SYSTEM BARRIERS TO JUSTICE & FAIRNESS FOR YOUTH

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Beyond the structural barriers in the juvenile defense system, Oregon's youth also face obstacles to justice in the juvenile court system.

A. Fees, Fines, & Costs

Juvenile court-initiated fees, fines, and costs assessed against youth and families can result in lasting barriers to future opportunities and financial independence. In March 2016, the U.S. Department of Justice (DOJ) called for a national review of policies conditioning release from confinement or supervision on financial terms without consideration of the ability to pay, noting this essentially "punishes a person for his poverty."[232]

A separate DOJ advisory issued in January 2017 called for the elimination of fees and costs in juvenile court, stating that:

> [I]n addition to fines [juvenile] courts often impose fees on children for diversion programs, counseling, drug testing and rehabilitation programs, mental health evaluations and treatment programs, public defenders, probation, custody and court costs. These fines and fees can be economically debilitating to children and their families and can have an enduring impact on a child's prospects.[233]

In 2018, the National Council of Juvenile and Family Court Judges (NCJFCJ) passed a resolution seeking to eliminate fines, fees, and costs in juvenile courts across the country and issued a bench card to assist judges ameliorating "the harms and hardships" caused by the imposition of fees, fines, and costs on youth and their families.[234] State and national best practices demand that defenders challenge monetary assessments any time the client wishes to oppose court-imposed financial obligations.[235]

Under Oregon law, young people and their families can be assessed an exorbitant number of fees, fines, and costs, from the first moment they enter the juvenile court system until the young person is no longer under court supervision. Court officials estimated to assessment team members that 90 to 99 percent of Oregon's youth and families involved in delinquency cases are indigent, but the state allows juvenile courts to charge families for nearly every aspect of their child's involvement in the justice system.

Under Oregon law, young people and their families can be assessed an exorbitant number of fees, fines, and costs.

232 U.S. Dep't of Justice, Dear Colleague Letter: Law Enforcement Fees and Fines (2016), https://finesandfeesjusticecenter.org/content/uploads/2018/11/Dear-Colleague-letter.pdf (last visited July 16, 2020).

233 U.S. Dep't of Justice, Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles 1 (2017), https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/advisoryjuvfinesfees.pdf (last visited July 16, 2020).

234 Nat'l Council of Juvenile & Family Court Judges et al., Ensuring Young People Are Not Criminalized for Poverty: Bail, Fees, Fines, Costs, and Restitution in Juvenile Court (2018) [hereinafter Ensuring Young People Are Not Criminalized For Poverty], https://njdc.info/wp-content/uploads/2018/04/Bail-Fines-and-Fees-Bench-Card_Final.pdf.

235 Or. Bar Performance Standards, *supra* note 36, at Standard 6.1 (providing that a lawyer should seek to mitigate the "minimum and maximum fines and assessments [and] court costs that may be ordered..."); National Juvenile Defense Standards, *supra* note 7, at Standards 6.2, 10.3.

1. The Breadth of Potential Costs & Fees in Oregon's Juvenile Court System

Under Oregon law, there are a host of enumerated areas in which youth and their families may be charged for accessing the justice system. For example, youth and families may be ordered to pay all or part of the administrative costs of determining eligibility for and the cost of "legal and other services that are related to the provision of appointed counsel," including both the administrative fee to determine if they are sufficiently indigent to receive a publicly-funded lawyer, as well as the services of that lawyer.[236] This is the case even though the state is obliged to provide counsel to those who cannot afford it.

Young people and their family may also be ordered to pay the cost of mental health assessment or screening,[237] the testing of blood or buccal samples,[238] and HIV testing.[239] As part of disposition, the court can also order costs and expenses for medical care of any child held in detention, in a correctional facility, or in the custody of DHS;[240] the cost of education and counseling;[241] a supervision fee;[242] and, child support for any young person under the court's jurisdiction.[243]

When court-imposed, these costs are fixed; the family has no choice as a consumer over which services are utilized by the state or given the option to compare costs, as they might if their child's care were in their hands. As such, it simply becomes a way to fund the juvenile court system on the backs of mostly indigent youth and families.

Courts may also charge a filing fee for a young person requesting expunction.[244] Similarly, youth must pay a filing fee to petition the court for relief from juvenile sex offender reporting requirements.[245]

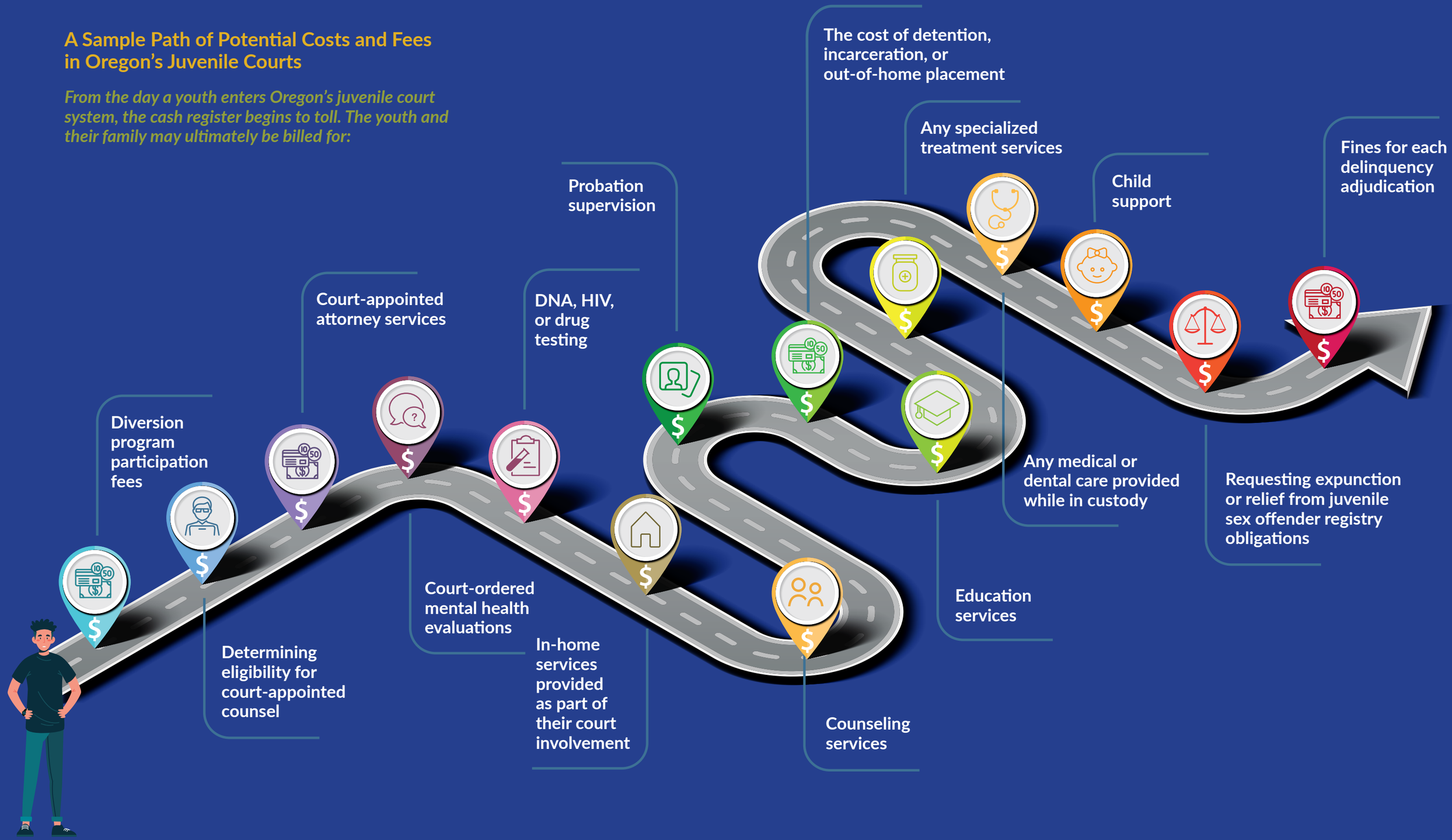
Like adults, youth are also subject to punitive fines if found delinquent for an act that would be an offense if committed by an adult.[246] But, unlike the adult criminal provisions, the delinquency code requires the court to "consider the potential rehabilitative effect of a fine" in determining the amount of the fine for a young person, which allows for significant discretion in the assessment of fines.

Juvenile system fines, fees, and costs, which can even be levied against youth and families who are presumed to be indigent, impose a heavy burden on impoverished families, extend and deepen children's involvement in the juvenile court system, hinder youth and family success, and in some circumstances impinge on a young person's right to counsel. Assessment team members discovered that practices of assessing, collecting, and defending against financial assessments varies widely from jurisdiction to jurisdiction, and even from jurist to jurist within some jurisdictions.

236 Or. Rev. Stat. § 419C.203(1)-(3) (2012). *See also* Or. Rev. Stat. § 151.487 (2012); Or. Rev. Stat. § 419C.200(1)(b) (2018).
237 Or. Rev. Stat. § 419C.380(4) (2018); Or. Rev. Stat. § 419C.570(1)(a)(B) (2003).
238 Or. Rev. Stat. § 419C.473(1) (2019).
239 Or. Rev. Stat. § 419C.475(2) (2020).
240 Or. Rev. Stat. § 418.034(2) (1993). *See also* Or. Rev. Stat. § 419B.400 (2016); Or. Rev. Stat. § 419B.402 (2003); Or. Rev. Stat. § 419B.404 (2003); Or. Rev. Stat. § 419B.406 (2003); Or. Rev. Stat. § 419C.590 (2016); Or. Rev. Stat. § 419C.592 (2003); Or. Rev. Stat. § 419C.595 (2003); Or. Rev. Stat. § 419C.597 (2003).
241 Or. Rev. Stat. § 419C.570(1)(a) (2003).
242 Or. Rev. Stat. § 419C.449 (2003); Or. Rev. Stat. § 419C.446(2) (2012).
243 Or. Rev. Stat. § 419C.590(1) (2016).
244 Or. Rev. Stat. § 21.135 (2019).
245 Or. Rev. Stat. § 163A.130(1) (2020); Or. Rev. Stat. § 21.135 (2019).
246 Or. Rev. Stat. § 419C.459 (2012). *See* Or. Rev. Stat. § 137.286 (2016); Or. Rev. Stat. § 153.021 (2017).

A Sample Path of Potential Costs and Fees in Oregon's Juvenile Courts

From the day a youth enters Oregon's juvenile court system, the cash register begins to toll. The youth and their family may ultimately be billed for:



This artwork has been designed using resources from Freepik.com

2. Costs & Fees Affecting Access to Counsel

Beyond the obvious economic hardships these multiple fines, fees, and costs place on youth and families, court-imposed financial obligations have a direct, negative impact on children's constitutional rights.

The United States Supreme Court has long held that children in delinquency court are entitled to publicly funded counsel.[247] NCJFCJ recommends that courts should "[a]ppoint counsel without consideration of family income" and "[e]xempt children and their families from the imposition of counsel fees."[248]

Oregon law mandates counsel for youth in juvenile court,[249] but "requires the court's determination that the youth or the youth's parents or guardians are without sufficient financial means to employ suitable counsel" before appointing counsel.[250] The law requires the court to inform the parents or guardian at the first appearance before the court that they are obligated to "pay for compensation and reasonable expenses for counsel for the youth. . . ."[251]

In short, youth and their families can be required to pay a fee for someone to decide whether they are unable to afford counsel, and if so, they may still have to pay for some or all of the costs of that representation.[252]

Notwithstanding these requirements concerning financial ability and notification of possible financial obligations surrounding appointed counsel, one state-level stakeholder reported that "the majority of courts have gone to automatic eligibility for counsel for kids." Assessment team members confirmed that in only a few jurisdictions visited did courts routinely charge families a fee for appointed counsel for youth.

However, some jurisdictions continue to do so. In one of the few jurisdictions assessing fees for counsel, youth and their parents or guardian were assessed more than $700 for representation on a felony-level offense and $200 for a misdemeanor-level offense. In another jurisdiction, courts imposed a flat fee of $100 per case for counsel. In one of these jurisdictions, stakeholders widely reported that because of the counsel fees, youth who return to court routinely decline the appointment of counsel, a practice permitted by the court there for probation violation hearings and "low-level offenses." Stakeholders also pointed out that youth and families expressed frustration that the court will not allow them to waive counsel for more serious offenses, given the high costs of appointed counsel.

247 *In re* Gault, 387 U.S. 1, 42 (1967).
248 Ensuring Young People Are Not Criminalized for Poverty, *supra* note 234.
249 Or. Rev. Stat. § 419C.200(1)(a) (2018).
250 Or. Rev. Stat. § 419C.200(1)(b) (2018).
251 Or. Rev. Stat. § 419C.020(1)(a) (2003).
252 *See Gault*, 387 U.S. at 40.

3. Supervision & Testing Fees

The problem of court-imposed costs goes beyond appointment of counsel. In most sites visited, assessment team members learned that courts impose supervision or probation fees as a matter of course for nearly all children. In some jurisdictions, for example, there is a one-time probation supervision fee imposed—$30 in one jurisdiction and $50 in another. A few jurisdictions reported that probation supervision fees are charged each month. While the monthly fee may seem low—$10 per month in one jurisdiction—fees can add up quickly over the length of probation. In most jurisdictions, assessment team members learned that there were also reportedly fees for accessing diversion programs.

Testing related to treatment can also cost money. Some jurisdictions charge up to $35 for positive urine screens and up to hundreds of dollars—$300 to $600 in one jurisdiction—for youth adjudicated of sex offenses who are required to submit to polygraph testing, which may also incur even more costs.[253]

4. Inconsistent Assessment of Fees, Fines, & Costs Across Jurisdictions

Stakeholders in most jurisdictions visited reported that the imposition of certain costs and fees that were once commonplace—such as those for appointment or cost of counsel, accessing services, the cost of detention or placement, and GPS monitoring—are now rare, although still permitted under the code. The code provides courts wide discretion based upon the young person's ability to pay or when considering the rehabilitative effect of assessing financial costs, and many courts have changed their practice by not imposing them. This change has been informal, based on judicial discretion, and not by any formal policy change or in response to coordinated, statewide defender advocacy.

In nearly half of jurisdictions visited, stakeholders expressed pride and relief that youth in their area were no longer saddled with as many fines, fees, and costs as children in other jurisdictions, but were concerned that any statewide effort to institute a uniform policy would limit discretion and lead to requirements to assess fees against youth in their jurisdictions.

While some jurisdictions have tried to address the burdens that such financial obligations impose on youth and families, assessment team members found that they have not been completely eliminated in *any* of the jurisdictions visited for this report.

The dramatic variance in how and why fees, fines, and costs are imposed on youth or their families across Oregon is concerning. While many jurisdictions made positive and significant strides in lowering the financial impact court involvement has on youth and their families, these improvements are inconsistent. As a result, geography currently plays a significant role in whether a youth or their family faces significant financial hardship from court involvement.

253 In one jurisdiction, the assessment team learned that youth are told that if they fail their polygraph, they will have to pay for it. This raises further concerns about the already dubious practice of using polygraph testing for treatment for youth.

Potential Sanctions for Failing to Pay Court-Related Costs

5. Penalties for Non-Payment

Even in jurisdictions that have reportedly eliminated the imposition of nearly all fees and costs directly assessed against youth, many still imposed financial assessments on their families, based upon the family's income and the parents' or guardian's ability to pay. In nearly every jurisdiction that imposed monetary obligations, assessment team members learned that children and their families could face a number of consequences for failing to satisfy court debt.

In some jurisdictions, youth faced violations of probation and additional sanctions when they failed to meet their financial obligations, and some courts can and did extend probation until youth pay or age out. After youth age out, they and their families can continue to face civil judgments, tax liens, and collections for outstanding payments, as well as the compounding assessment of late fees.

In jurisdictions where courts decline to impose such burdens on youth, assessment team members discovered that there were no formal policies or Supplemental Local Rules (SLRs) in place to ensure that every child and family will avoid the harms caused by financial assessments. Where utilized, court-ordered payments unnecessarily burden youth and their families, hinder rehabilitation, and do little to support or improve positive outcomes for youth.

6. Lack of Defender Advocacy

The sheer number of burdensome fines, fees, and costs requires actively engaged defender advocacy against all potential financial assessments. The Oregon Bar Association Standards provide that a lawyer should seek to mitigate the "minimum and maximum fines and assessments [and] court costs" that may be ordered by the court; something which is reinforced by national standards.[254] However, while jurists can, and reportedly sometimes do, suspend or allow community service in lieu of fines on their own accord, stakeholders pointed out that such requests did not often come from defenders, but were simply done on the court's own accord.

254 Or. Bar Performance Standards, *supra* note 36, at Standard 6.1 (Implementation 9) (providing that a lawyer should seek to mitigate the "minimum and maximum fines and assessments [and] court costs that may be ordered…"); National Juvenile Defense Standards, *supra* note 7, at Standards 6.2 cmt., 10.3.

Assessment team members learned that vigorous advocacy against any imposition of fees, costs, and fines regularly occurred in just two of the ten counties visited for this report, and occasional arguments against fees and costs were made in an additional two counties. In the remaining jurisdictions, court-ordered fees, costs, and fines were widely perceived as mandatory, and defender advocacy against them was reportedly infrequent.

Assessment team members observed several hearings across the state in which costs were imposed. They described defender advocacy in those cases as "perfunctory" and "half-hearted." This is in direct contrast to state and national best practices that demand juvenile defenders challenge these assessments every time they are imposed, in keeping with a client's expressed interests. Whether due to a lack of training, a failure to understand the scope of costs that may be imposed, or a lack of recognition by defenders that this is an important part of the defense of their clients, far too many jurisdictions in Oregon lack adequate defender advocacy regarding fees, fines, and costs imposed on their clients.

7. Futility in Collection

Stakeholders in every jurisdiction in which fees, fines, and costs were assessed reported that a sense of futility surrounds the collection of payments from youth and families. The collection process is not only sanction-based and compounding, but also a poor use of resources. Juvenile court counselors must monitor payments and file probation violations or requests for extensions of probation to ensure that youth and their families satisfy their financial obligations. As a result of failures to pay, youth can be placed on longer periods of probation, which generates additional costs that become even harder to pay off.

Court administrators spend precious time and resources requesting and storing financial eligibility information and then collecting often very small but frequent payments from youth and families. In those few places where defender advocacy against financial assessments occurred, defenders must spend their time and resources (which is billed to the state and then passed on to the youth and families) mounting a defense against financial assessments, which takes attorneys away from other important aspects of a client's case.

As a result of failures to pay, youth can be placed on longer periods of probation, which generates additional costs that become even harder to pay off.

The exercise in futility extends further, in that no jurisdiction reported that the collection of fees, fines, and costs provided any appreciable benefit to youth or the system. As one stakeholder revealed to assessment team members, it was the realization that "you can't get blood from a turnip," that drove the policy shift away from imposing costs in many counties, rather than a true appreciation of the harm caused to youth and families.

The fees, fines, and costs allowed by Oregon juvenile courts can infringe upon youth rights, lead to youth waiving their right to counsel, extend court involvement, and impede the delivery and perception of justice, all while providing no discernable financial benefit to the state or counties. And in Oregon, as elsewhere across the country, children of color are disparately impacted by these financial obligations because they are overrepresented in the court system and are thus more frequently at risk of financial sanctions.[255] Further, while defender advocacy against the imposition of such costs does exist in some jurisdictions and can be successful, not every child receives this level of defense.

255 Ensuring Young People Are Not Criminalized For Poverty, *supra* note 234 (citing U.S. Dep't of Justice, Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles 2 (2017), https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/advisoryjuvfinesfees.pdf).

The appointment of counsel for a child must not be influenced by looming costs. A growing number of states presume that young people are indigent as a matter of law and appoint counsel notwithstanding the family's ability to pay.[256] Oregon should follow suit, codify the practice that exists in most of its jurisdictions, and abolish indigence determinations and the imposition of counsel fees for young people in all delinquency cases.

Many of Oregon's counties have recognized the injustice in assessing fees and costs against youth and have waived or reduced juvenile court-related financial assessments. Oregon must take the next step and make a statewide commitment to the kinds of reform assessment team members found at the local level in some jurisdictions and exempt youth from financial assessments and the lasting impacts of court-imposed debt, notwithstanding where they live.

B. Uniform Rules of Procedure

The informality of juvenile court proceedings has long been an issue, but *Gault* intended to resolve that problem, declaring informality unacceptable because it breeds lax observance of children's due process rights and other basic rights afforded to adults.[257]

A study cited by the *Gault* Court warned:

> There is increasing evidence that the informal procedures, contrary to the original expectation, may themselves constitute a further obstacle to effective treatment of the delinquent to the extent that they engender in the child a sense of injustice provoked by seemingly all-powerful and challenge-less exercise of authority by judges and probation officers.[258]

Though more than 50 years have passed since *Gault* was decided, this quote still rings true in parts of Oregon.

Every court has a culture that develops from a combination of practices, expectations, and behaviors that go beyond what the law and court rules dictate. Court culture should reinforce uniform due process protections that ensure high-quality defense representation for all young people.

A significant barrier to access to justice and fairness for all of Oregon's young people is the absence of statewide, uniform rules or statutes that govern juvenile court procedure for delinquency cases. While very limited aspects of delinquency proceedings in Oregon are governed by Oregon's juvenile code,[259] the Oregon Rules of Criminal Procedure,[260] Oregon's Uniform Trial Court Rules (UTCRs),[261] and a few local court rules,[262] there is no comprehensive guidance given to juvenile delinquency courts to ensure due process and uniform procedure for all children.

256 *See, e.g.*, 42 Pa. Cons. Stat. § 6337.1 (2014), Ohio Admin. Code. 120-1-03(B)(4) (2015) (providing children in delinquency cases are presumed indigent); N.C. Gen. Stat. § 7B-2000(b) (2001) (providing children in delinquency cases are presumed indigent).
257 *In re* Gault, 387 U.S. 1, 26 (1967).
258 *Id.* at 26, n.37; President's Comm'n on Law Enf't & Admin. of Justice, The Challenge of Crime in a Free Society 85 (1967), https://www.ncjrs.gov/pdffiles1/nij/42.pdf.
259 Or. Rev. Stat. § 419C.001 (2007) through 419C.680 (1997).
260 *See* Or. Rev. Stat. § 419C.270 (2020).
261 Or. Uniform Trial Court Rules, UTCR 11.01 (2006); Or. Uniform Trial Court Rules, UTCR 11.020 (2006); Or. Uniform Trial Court Rules, UTCR 11.040 (2006); Or. Uniform Trial Court Rules, UTCR 11.060 (2015); Or. Uniform Trial Court Rules, UTCR 11.110 (2019); Or. Uniform Trial Court Rules, UTCR 11.120 (2019).
262 *See Supplementary Local Court Rules*, Or. Judicial Branch, https://www.courts.oregon.gov/rules/Pages/slr.aspx (last visited May 7, 2020)

In fact, Oregon is one of just eight U.S. states that has no statewide rules or statutes governing juvenile delinquency procedure.[263] Thirty-five states have specific rules or statutes for procedure in delinquency cases, and the remaining seven states have a combination of rules that apply.[264]

While a small number of rules of criminal procedure specifically apply to delinquency proceedings in Oregon, including rules regarding evidentiary exclusion, electronic recording of custodial interviews with law enforcement, pleadings and related procedure, demurrers, sufficiency of accusatory instruments, pretrial discovery, and evidence, no other rules of criminal procedure have been incorporated into in the delinquency code.[265]

Because there was no uniformity in court procedure across jurisdictions, the assessment team found that court culture manifested itself, for better and for worse, in ways that significantly impacted children. For example, establishing uniform procedure would rein in the widely varying practice regarding when counsel was appointed, to ensure advance defense preparation, and to increase the quality of advocacy at the initial hearing. Rules that outline youth- and case-specific colloquies would provide a layer of protection ensuring children's waivers of counsel and entries of admission are knowing, intelligent, and voluntary. And, although probable cause determinations are required by the code, few jurists are making them, necessitating additional rule-based guidance on this issue.

Assessment team members also learned that while the majority of jurisdictions do not impose fines or as many fees and costs as are permitted in the code—and some even presume youth indigent as a matter of local, albeit informal—in other jurisdictions, youth and families are expected to bear the costs of counsel and treatment, no matter if they can afford it. Uniform procedure would ensure that children across the state benefit from logical, success-focused practices that are in place in some counties.

Uniform rules of procedure would also strengthen juvenile defense. Although the assessment team saw instances of client-focused representation and a desire to zealously represent children, delinquency court culture and local practice did not generally support strong defender advocacy in all of the counties visited. Such a failure to support effective defense as a check on the system is a failure to support due process. Additionally, this absence of legal procedure and limited defender presence beyond representation in individual cases resulted in wide variances from county to county—and in some places jurist to jurist—in the timing of appointment of counsel, defender presence and preparation at initial hearings, and defender representation in some jurisdictions in later hearings, including those concerning minor-in-possession charges, probation violations, offers of formal accountability agreements, and, in at least one jurisdiction, misdemeanor-level offenses.

In some places, the absence of clear procedures has led to very well-intentioned individuals in non-defender roles stepping in to "help" the client without realizing the need to step in comes from a gap in defender presence and advocacy. In one jurisdiction, the juvenile department chief seemed more familiar with the detention statute than many defenders and was integral in using it as the basis for reducing the number of "overrides" regarding detention decisions. The lack of clear procedure for detention hearings, and how and when override decisions are made, likely contributed to the lack of defender advocacy. While it is always useful to have well-informed juvenile department staff, advocacy—especially advocacy based in the law—should not be left to the grace of such individuals.

263 Amanda J. Powell, *State Rules Research* (Dec. 12, 2019) [hereinafter *State Rules Research*] (unpublished spreadsheet) (on file with author).

264 *Id.*

265 Or. Rev. Stat. § 419C.270 (2020). *See also* Or. Rev. Stat. § 419B.800 (2001) to 419B.929 (2001) (governing dependency but not delinquency proceedings).

Once Oregon takes the steps needed to improve its juvenile defense system structures, the barriers that impede equal access to justice for all children will begin to fade. But, unless Oregon enacts uniform mandates for delinquency court procedure, as plainly apply in criminal and dependency courts throughout the state, young people will continue to be at risk of accessing justice differently depending upon where they live.

C. Equitable Treatment of Youth

In 2016, the Oregon Youth Development Council reported that "[y]outh of color are disproportionately represented in Oregon's Juvenile Justice System at all points of contact—from referral to juvenile departments by law enforcement, to placement in secure Oregon Youth Authority (OYA) facilities—resulting in increased likelihood of these youth dropping out of school, becoming homeless, unemployed and imprisoned."[266]

While recognizing a steady decline in referrals for Oregon's youth overall, the report noted that racial and ethnic disparities persist. Examining data from 2015 Juvenile Justice Information System (JJIS) reports,[267] the Council, using their own calculation of a statewide Relative Rate Index (RRI), reported racial disparities at four juvenile system decision points—referrals, secure detention, secure corrections (for disposition), and youth transferred to adult court. In each case, Black youth, Latinx youth, and Native American youth saw greater disparities when compared to white youth.[268]

While statewide data on racial disparities may be useful for providing a broad overview, county-level data may be more useful in targeting strategies to address racial disparities in Oregon's delinquency system. The assessment team reviewed a publicly available JJIS report from 2018, which provided the RRI for every Oregon county at six decision-making points: referrals to juvenile court, diversion, secure detention, petitions filed, confinement and transfers to adult court.[269] Using the RRI, the report highlights the individual counties and decision points where racial disparities in Oregon's delinquency system are most significant.[270]

For example, the report calls attention to disparities at the point of referral to juvenile court for Black youth in Lane, Multnomah, and Washington counties, and for Native youth in Marion County.[271] Even though this data appears to be publicly available for every county in Oregon and is calculated every year,[272] the vast majority of stakeholders reported that there was no targeted juvenile defense advocacy to combat racial injustice.

A jurist explained to assessment team members, "I know there are arguments to be made at the systemic level concerning disproportionality at every decision point—in the deep-end and use of detention and in law enforcement interaction with youth of color, but it doesn't come up in terms of arguments in court."

266 Anya Sekino, Or. Youth Dev. Council, Juvenile Justice: Equity Considerations 2 (2016), http://www.oregonyouthdevelopmentcouncil.org/wp-content/uploads/2016/09/Juvenile-Justice-Position-Paper_YDC.pdf.
267 *Id.* at 3 (explaining that the "Relative Rate Index (RRI) method involves comparing the relative volume (rate) of activity at major decision points of the juvenile justice system for minority youth with the volume of that activity for white (majority) youth.").
268 *Id.*
269 Juvenile Justice Info. Sys. Steering Comm., Racial and Ethnic Disparities (2018), https://www.oregon.gov/oya/jjis/Pages/RRIReports.aspx (last visited July 16, 2020).
270 *Id.*
271 *Id.*
272 *JJIS Annual Data and Evaluation Reports: Racial and Ethnic Disparities*, Or. Youth Auth., https://www.oregon.gov/oya/jjis/Pages/Reports.aspx#Racial_and_Ethnic_Disparities (last visited July 16, 2020).

However, in a few jurisdictions, stakeholders reported that defenders "sometimes" raise arguments relating to race, but that their primary focus concerned the lack of appropriate resources for Black and Latinx youth. In one jurisdiction, a juvenile court counselor reported that "attorneys here are culturally sensitive towards [Latinx] youth but make no specific arguments in court."

In a recent national report, the Annie E. Casey Foundation noted that experts cite frequent "discomfort in discussing race and racial inequities" in juvenile justice agencies: "In effect, racial disproportionality (and race generally) has become the elephant in the room: most people concede that racial disparities pose a huge problem but are reluctant to candidly discuss their root causes and possible remedies."[273] While that report did not speak specifically to the situation in Oregon, it provides an important perspective on the lack of arguments on this issue that were relayed and observed throughout this assessment.

While there is evidence that a desire to prevent racial disproportionality in transfer decisions drove the reforms in Senate Bill 1008 in 2019,[274] defender advocacy to combat racial injustice in juvenile courts across the state remains lacking.

Defender advocacy to combat racial injustice in juvenile courts across the state remains lacking.

Although there does not seem to be state-specific data on the overrepresentation of LGBTQ youth in Oregon, the Youth Development Council reported in 2016 that "[a]vailable research has estimated that LGBT youth represent 5% to 7% of the nation's overall youth population, but they compose 13% to 15% of those currently in the juvenile justice system," and that "many LGBT youth in the juvenile justice system were arrested for committing non-violent survival crimes such as prostitution and shoplifting, and were likely living on the streets at the time of the offense."[275]

National juvenile defense standards provide that defenders should not only make case-specific challenges related to race,[276] but that they should also challenge systemic injustices that lead to disparate treatment and discrimination of youth of color and LGBTQ youth.[277]

The Juvenile Justice Information System (JJIS), administered by the Oregon Youth Authority and in collaboration with county juvenile departments across Oregon, collects, houses, and publishes an impressive amount of data about the juvenile justice system.[278] JJIS reports contain statewide data regarding many aspects of the juvenile court system, such as referrals, detention, diversion, offenses, petitions, dismissals, dispositions, restitution, community service, recidivism, cases transferred to adult court, and crosscutting issues like race and gender. Most defenders and defender supervisors were aware of the data JJIS collects, but none reported that they routinely reviewed the data or had a system in place to make the best use of it.

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273 The Annie E. Casey Found., Transforming Juvenile Probation 14 (2018) [hereinafter Transforming Juvenile Probation], http://www.aecf.org/resources/transforming-juvenile-probation (quoting Nat'l Research Council, Reforming Juvenile Justice: A Developmental Approach 6 (Richard Bonnie et al. eds., 2013)).

274 Len Reed, *Offering A Chance at Redemption: Oregon's New Juvenile Justice Law Reverses Key Measure 11 Provisions*, Or. St. B. Bull., Aug./Sept. (2019) (explaining that the momentum behind the passage of S.B. 1008 was inspired by Senator Jackie Winters who passed away just days before the bill's passage: "Winters not only believed that the justice system should be rooted first in rehabilitation and making second chances possible, but that a predetermined punishment model reinforced the incarceration of minorities at disproportionate rates.").

275 Sekino, *supra* note 266, at 3.

276 *E.g.*, National Juvenile Defense Standards, *supra* note 7, at Standards 2.8, 3.3, 3.8.

277 *Id.* at Standards 2.7, 10.5.

278 *See Juvenile Justice Information System: What is JJIS?*, Or. Youth Auth., https://www.oregon.gov/oya/pages/jjis.aspx (last visited May 7, 2020).

All stakeholders must recognize existing racial disparities in the juvenile court system and work to eliminate them, and juvenile defenders have a unique role and specific responsibilities. Juvenile defenders must recognize their own vulnerability "to the negative effects of implicit bias as they practice in a paternalistic system that is easily manipulated by perceptions of race and class," and provide "loyal, client-directed legal advocacy" to safeguard against the harms caused by the effects of racial injustice in the juvenile justice system.[279]

Further, Oregon must commit to combatting disparate treatment and injustice relating to its most vulnerable youth by requiring ongoing data collection and analysis of system involvement and outcomes and by requiring debias training for all stakeholders.

D. Juvenile Department Intake Processes

In some jurisdictions, the assessment team found that the initial intake interview with the juvenile department could create a barrier to youth receiving the full benefit of representation by counsel throughout their case. Some stakeholders expressed concern to assessment team members that counsel did not have a role at the youth's intake interview with the juvenile department, during which "too much information is divulged that comes back to [hurt] them later." And, while many stakeholders "hoped" that law enforcement and intake workers were properly informing young people of their right to counsel, no jurisdiction reported that counsel was routinely provided for interrogation or the intake interview.

In many places, the intake interview with the juvenile department was a child's first contact with the juvenile court system. Youth who were detained after arrest were also subject to an intake process by the juvenile department. These interviews served many functions, and what was covered during the intake process varied from place to place.

Assessment team members learned that in many jurisdictions, the juvenile department had nearly exclusive decision-making authority over which youth were referred for diversion and which for charging. One district attorney told assessment team members, "DAs defer completely to the juvenile department on diversion."

Across the state, stakeholders shared that children could ask for an attorney at any time, but that juvenile defenders had no formal role during the early stages of system involvement. A juvenile court counselor explained that youth are informed of their right to talk to an attorney during the interviews in their jurisdiction, but that "there is not a system in place to get a lawyer down here at 11 o'clock at night if a kid ever asked for one." In another jurisdiction, the intake worker said that "attorneys could be involved as a courtesy, but they aren't paid for it."

It became clear in a few jurisdictions that, given the juvenile department's role in charging and diversion decisions, the intake workers necessarily talked to youth about the facts of the allegations. One assessment team member asked an intake worker, "What happens if a child walks into the intake interview and says they didn't do it?" They responded: "I explain that I have the police report and that's evidence that they did do it. I then read the statute about the offense charged. I tell them that if they don't think what they did fits this, they can go to court, and that if they don't want to take responsibility, they can go to court." The worker then said that very few children ever decided to go to court.

279 Kristin Henning, *Race, Paternalism, and the Right to Counsel*, 54 Am. Crim. L. Rev. 649, 694 (2017). *See*, Racial Justice for Youth: A Toolkit for Defenders, https://defendracialjustice.org (last visited May 7, 2020); *Confronting Bias*, Racial Justice for Youth: A Toolkit for Defenders, https://defendracialjustice.org/confronting-bias/ (last visited May 7, 2020).

In other jurisdictions, juvenile department staff recognized the inherent conflict created when youth talk about their alleged acts to juvenile department staff without an attorney present. In one such jurisdiction, assessment team members learned that all staff are trained not to talk to youth about the offense. In another jurisdiction, a juvenile court counselor told assessment team members they refused to work the intake assignment "because of all of the questioning of kids—I just don't think it is right."

Many stakeholders across the state expressed that having an attorney available at intake, especially for youth whose cases are likely to receive an offer for diversion and a formal accountability agreement, would be ideal. One juvenile department staff explained that having an attorney present is not just good for young people, "adding an attorney at intake would make us all feel secure."

The assessment team met many caring juvenile court counselors who had the youths' best interests at heart. But stakeholders expressed concern that young people shared details about the alleged incident in their cases early in their contact with the system without an attorney present, limiting their options later in their case. This was especially problematic, given that statements made during the intake process are not protected and can be used against young people in court.

Although counselors conducting intake interviews can ask questions about the alleged offense, youth may not know or believe they are free to terminate the conversation and leave. While intake workers may inform youth of their right to an attorney at some point during the interview, there are no uniform policies or procedures to ensure statewide good practice, and no defender in any of the jurisdictions visited reported that they attended these interviews with their clients.

National juvenile defense standards outline an essential aspect of representing youth: "Protecting the client from making incriminating statements or acting against the client's own interests," and recognizes that "the timing and extent of counsel's early involvement in the case can affect the final outcome."[280]

Without question, Oregon youth have the right to counsel prior to entering a formal accountability agreement as an alternative to prosecution in juvenile court.[281] Given the structure of the intake process within juvenile departments in many jurisdictions, this right is not fully realized for all youth. Accordingly, juvenile system stakeholders must ensure that youth have access to counsel at the earliest stages of juvenile system involvement. Further, juvenile department intake workers must be restricted from obtaining and later utilizing incriminating statements from youth in court proceedings.

E. Record Clearance & Confidentiality

The United States Supreme Court has long recognized that it may once have been the goal of juvenile court "to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past," but that "claim of secrecy. . . is more rhetoric than reality."[282]

While juvenile court records are generally not available to the public in Oregon, there are a number of exceptions. Importantly, court docket information—which includes a child's name; date of birth; the basis of the court's jurisdiction over them; the time, place, and date of the court's proceedings; the act alleged; and the court's disposition order—is not confidential.[283] Information relating to a child taken into custody is also not confidential.[284]

280 National Juvenile Defense Standards, *supra* note 7, at Standard 3.1.
281 Or. Rev. Stat. § 419C.245(1) (2018).
282 *In re* Gault, 387 U.S. 1, 24 (1967).
283 Or. Rev. Stat. § 419A.255(6) (2020).
284 Or. Rev. Stat. § 419A.255(7) (2020).

Beyond this information, the statute permits confidential court records to be inspected and copied by parties and those with an interest in the court process or the child's treatment.[285] And, while there are provisions restricting the disclosure of confidential court records, the statute contains no consequences for unlawfully sharing such information.[286]

Oregon law does allow for record clearing through an expunction process related to some offenses, although many serious offenses are not eligible.[287] Courts have discretion to order records to be expunged under special circumstances,[288] and the waiting period for expunction varies.[289]

Youth court records relating to offenses that were not charged or have been dismissed may be expunged by the court, but it is not automatic; rather, the young person must petition the court to do so and generally must wait until age 18 and meet the same criteria for expunction as youth with adjudicated offenses.[290] While court records will be destroyed, if expunction is granted, records ancillary to the court record, including most blood and buccal samples and other physical evidence collected or stored by the state police, will not be destroyed.[291] Once expunged, a juvenile court record is treated as though it never occurred.[292]

Juvenile court records can create lasting barriers to youth success and can impede access to education, employment, and housing.

Juvenile court records can create lasting barriers to youth success and can impede access to education, employment, and housing.[293] Some of these barriers can be mitigated by expunction, but there is no way to erase disclosures that have already been made public.

Very few juvenile attorneys interviewed by assessment team members reported that they had assisted clients with expunction of their juvenile record. There seemed to be multiple reasons for this. The first obstacle was the timeline of sealing—for most cases, a young person must wait at least five years after their case is closed to request expunction.[294] With such long waiting periods after a case has closed, even attorneys who have post-disposition practices in place may have closed their files and lost contact with clients. To compound the problem, assessment team members learned that defenders are not appointed to assist youth with filing the necessary court documents to request expungement and are not appointed unless the matter is set for hearing and the young person requests counsel.

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285 Or. Rev. Stat. § 419A.255(1)-(2) (2020) (providing access to a wide range of public entities and private persons as the court may permit).

286 *See generally* Or. Rev. Stat. § 419A.255(8)-(20) (2020).

287 Or. Rev. Stat. § 419A.260(1)(d)(J)(i)-(xxv) (2019) (excluding from expunction eligibility records of a finding of delinquency for aggravated murder; murder; attempt, solicitation or conspiracy to commit murder or aggravated murder; manslaughter in the first or second degree; criminally negligent homicide; assault in the first degree; criminal mistreatment in the first degree; kidnapping in the first degree; rape in the first, second, or third degree; sodomy in the first, second, or third degree; unlawful sexual penetration in the first or second degree; sexual abuse in the first, second, or third degree; promoting or compelling prostitution; aggravated driving while suspended or revoked; aggravated vehicular homicide; and an attempt to commit a crime listed above other than manslaughter in the second degree and criminally negligent homicide). *But see* Or. Rev. Stat. § 419A.262(9)(a)-(b) (2015) (providing that youth may have records relating to rape in the third degree, sexual abuse in the third degree, attempt to commit those offenses, or a sex offense that is a class C-level felony expunged if certain criteria are met).

288 Or. Rev. Stat. § 419A.262(8) (2015).

289 *E.g.*, Or. Rev. Stat. § 419A.262(2)(a), (3)(b), (23) (2015); Or. Rev. Stat. 419A.265(1) (2017).

290 Or. Rev. Stat. § 419A.262(5)(a)-(b) (2015).

291 Or. Rev. Stat. § 419A.260(1)(d)(K)-(L) (2019).

292 Or. Rev. Stat. § 419A.262(22) (2015).

293 Nat'l Consumer Law Ctr., Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing 8 (2019), https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf (last visited July 16, 2020) (finding "About 94% of employers conduct some form of criminal history check, and about 90% of landlords run background checks on prospective tenants.").

294 Or. Rev. Stat. § 419A.262(2)(a) (2015).

Court policy can also make record clearing harder. One court official told assessment team members that the court does not make expunction forms available to the public because it wanted juvenile department staff to assist youth with their expunction requests. This practice places a heavy burden on that department and limits expunction for those who may not have a relationship with their probation officer or juvenile court counselor.

Other jurisdictions across the country have solved problems in their expungement processes by enacting automatic sunset provisions for juvenile records and/or providing for automatic sealing at the end of a juvenile case. The automatic sealing provision is especially critical to consider for youth with cases that were uncharged or dismissed. Although not yet successful, a provision for automatic expungement was introduced in Oregon's 2018 legislative session, indicating state-level awareness of the need to address this issue.[295]

In Oregon, the structure of the state's juvenile indigent defense system all but prevents youth from accessing counsel and in turn, the courts, for this vital and final phase of their juvenile court system involvement. At a minimum, the state must make the opportunities for expungement more transparent and accessible to young people seeking to clear their records.[296] Counsel must inform youth and their family about the collateral consequences of adjudication, including record confidentiality and eligibility for expunction.[297] The contracts developed by OPDS should include a mechanism to compensate attorneys for expunction filings, even if youth are not former clients.

295 S.B. 774, 80th Legis. Assemb., Reg. Sess. (Or. 2019).
296 National Juvenile Defense Standards, *supra* note 7, at Standard 7.6.
297 *Id.*; Or. Bar Performance Standards, *supra* note 36, at Standard 1.2 cmt.

STRENGTHS & PROMISING PRACTICES

Across the state, assessment team members noted that system stakeholders share a deep concern for Oregon's children and a genuine desire for children in the system to succeed. Most of the stakeholders surveyed, including those with decision-making power or influence on the outcome of the proceedings—like judges, district attorneys, juvenile court counselors, and juvenile defenders—held to the belief that children benefit from individualized and developmentally appropriate treatment and care.

Recent changes in the code and in practice signal an openness to strengthening the provision of justice for Oregon's youth. What follows are some examples of strengths and promising practices in Oregon's current system that can help inform other changes recommended by this assessment report.

Reducing the shackling of youth in court

Shackling young people can have profoundly negative impacts on their psyche and self-image. Shackling is degrading, undermines trust in adults, and may deepen depression and contribute to self-harming behavior.[298] The practice also impedes the attorney-client relationship, chills young people's constitutional right to due process, runs counter to the presumption of innocence, and draws into question the rehabilitative ideals of the juvenile court.[299]

One defender explained to assessment team members, "youth who are shackled 'shut down,' are embarrassed, and won't talk. They aren't able to write. Being shackled 'changes the demeanor of kids completely.'"

In 2018, recognizing these harms, Oregon joined 31 other states and banned the use of indiscriminate shackling in juvenile court.[300]

> Instruments of physical restraint, such as handcuffs, chains, irons, straitjackets, cloth restraints, leather restraints, plastic restraints and other similar items, may not be used during the juvenile court proceeding and must be removed prior to the youth, youth offender or young person being brought into the courtroom unless the court finds that the use of restraints is necessary due to an immediate and serious risk of dangerous or disruptive behavior and there are no less restrictive alternatives that will alleviate the immediate and serious risk of dangerous or disruptive behavior.[301]

Law enforcement must submit a written request for the use of restraints prior to a hearing, and the court must provide the youth and their counsel an opportunity to be heard before making written findings in support of any order requiring restraints.[302] If restraints are authorized by the court, they must provide the youth movement of their hands so they are able to handle, read, and write on documents.[303]

Restraints may not be used for convenience, as a substitute for staff supervision, or as punishment.[304] Youth may never be restrained to a stationary object or another person.[305]

Assessment team members learned that throughout the state, shackles were seldom used in juvenile court. One defender described that in the rare instance when a juvenile court counselor had a specific concern, the counselor would ask that the youth be shackled. In those instances, the court would hold a quick hearing at which the defender always objected, and the judge infrequently granted such requests. The defender pointed out that shackles are now rarely used even outside the courtroom. "Detention is attached to the court, and now, kids aren't even shackled to move from detention to courtroom."

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298 Nat'l Ctr. for Mental Health and Juvenile Justice, Policy Statement on Indiscriminate Shackling of Juveniles in Court (2015), https://njdc.info/wp-content/uploads/2014/09/NCMHJJ-Position-Statement-on-Shackling-of-Juveniles-032615-with-logos.pdf.

299 *Id.*; Nat'l Council of Juvenile & Family Court Judges, Resolution Regarding Shackling of Children in Juvenile Court (2015), https://www.ncjfcj.org/wp-content/uploads/2019/08/regarding-shackling-of-children-in-juvenile-court.pdf.

300 *See* Nat'l Juvenile Defender Ctr., Campaign Against Indiscriminate Juvenile Shackling (2018), https://njdc.info/wp-content/uploads/2018/09/Campaign-Against-Indiscriminate-Juvenile-Shackling-Fact-Sheet-2018.pdf; Or. Rev. Stat. § 419A.240(1)(a) (2018).

301 Or. Rev. Stat. § 419A.240(1)(a) (2018) (providing that restraints may be used during secure transportation to a detention facility or other secure facility as set forth in Or. Rev. Stat. § 419A.245 (2019)).

302 Or. Rev. Stat. § 419A.240(4)-(5) (2018).

303 Or. Rev. Stat. § 419A.240(6) (2018).

304 Or. Rev. Stat. § 419A.240(7) (2018).

305 Or. Rev. Stat. § 419A.240(6) (2018).

In another jurisdiction, a defender explained that "just after my young client assaulted a deputy, the client and I decided to not object; but at a hearing 30 days later, the court ordered no shackles, because 30 days is a long time for a child" and because there was no longer any immediacy of risk.

In other jurisdictions, stakeholders reported that defenders did not have to challenge shackling, because courts simply would not allow it. When shackling has been requested, defenders have been widely successful in challenging the practice.

Oregon law and practice have come in line with national best practices,[306] and Oregon's courts and juvenile defenders must stay vigilant and continue to challenge the use of physical restraints on children. The success of these 2018 reforms are good indicators of the broad interest and commitment to improving policies and practices that impact young people in delinquency courts statewide.

Probation rules reform

Nationwide, probation is the most common juvenile court disposition given to youth adjudicated delinquent.[307] In 2018, 69 percent of Oregon's youth who were adjudicated delinquent were ordered into probation supervision as their disposition.[308]

Probation orders and supervision are intended to lead youth to success and rehabilitation. However, standardized probation terms often make it difficult for youth to succeed.[309] Growing research shows that when fewer, individualized, and targeted interventions are put in place, the goals of the juvenile court are more likely to be realized: youth will succeed and community safety will be enhanced.[310]

In 2016, one Oregon county's probation reforms, which significantly limited the number of programmatic and behavioral requirements listed in its standard court order, were highlighted as being an important step toward improving youth success on probation.[311]

306 National Juvenile Defense Standards, *supra* note 7, at Standards 2.8, 3.6.

307 *Juveniles on Probation – Probation as a Court Disposition*, Office of Juvenile Justice & Delinquency Prevention, https://www.ojjdp.gov/ojstatbb/probation/qa07102.asp?qaDate=2018 (last visited Apr. 2, 2020).

308 Juvenile Justice Info. Sys. Steering Comm., Data & Evaluation Report: Dispositions (2018) [hereinafter Dispositions], https://www.oregon.gov/oya/jjis/Reports/2018StatewideDispositions.pdf (last visited July 16, 2020).

309 Naomi E. Goldstein et al., *You're on the Right Track!" Using Graduated Response Systems to Address Immaturity of Judgment and Enhance Youths' Capacities to Successfully Complete Probation*, 88 Temp. L. Rev. 789, 803–36 (2016).

310 The Annie E. Casey Found., Probation Practice and Reform: Key Themes and Findings from Available Literature (2016), http://www.aecf.org/m/privy/Deep-End-Resource-Guide-8b-Probation-Practice-and-Reform.pdf; The Annie E. Casey Found., Transforming Juvenile Probation, *supra* note 273, at 14 (discussing the counterproductive use of numerous, standard conditions and the National Council of Juvenile and Family Court Judges' recommendation for individualized case plans, expectations, and goals); Dick Mendel, *Case Now Strong for Ending Probation's Place As Default Disposition in Juvenile Justice*, Juvenile Justice Info. Exchange (Apr. 14, 2016), http://jjie.org/2016/04/14/case-now-strong-for-ending-probations-place-as-default-disposition-in-juvenile-justice/227322; (last visited July 16, 2020) Nat'l Council of Juvenile & Family Court Judges, Resolution Regarding Juvenile Probation and Adolescent Development (2017), https://www.ncjfcj.org/wp-content/uploads/2019/08/regarding-juvenile-probation-and-adolescent-development.pdf. *See also NCJFCJ Resolves to Help Modernize Approach to Juvenile Probation with Better Understanding of Adolescent Brain Development*, Nat'l Council of Juvenile & Family Court Judges, https://www.ncjfcj.org/news/ncjfcj-resolves-to-help-modernize-approach-to-juvenile-probation-with-better-understanding-of-adolescent-brain-development/ (last visited May 20, 2020); Robert G. Schwartz, Stoneleigh Found., Youth on Probation: Bringing a 20th Century Service Into a Developmentally Friendly 21st Century World (2017), http://njdc.info/wp-content/uploads/2017/10/Youth-on-Probation-Monograph.pdf.

311 Nat'l Juvenile Defender Ctr., Promoting Positive Development: The Critical Need to Reform Youth Probation Orders 5 (2016), https://njdc.info/wp-content/uploads/2016/12/Promoting-Positive-Development-Issue-Brief.pdf.

Site visitors learned that probation reforms in that county have inspired other jurisdictions in Oregon to work toward improving outcomes for youth through individualized probation conditions. As one juvenile court counselor told assessment team members, "Everyone talks about how there are only six uniform conditions of probation [in that county], but here we think six is too many. We can do better for our youth."

Defenders who are working in close consultation with their clients can ascertain their interests and needs, and advocate against unnecessary and cumbersome probation conditions.[312] And all stakeholders can work together to ensure successful outcomes for all youth.

Consultation with counsel prior to waiver

Recognizing that young people do not have the knowledge, experience, or developmental capacity to fully appreciate the right to counsel or what it means to relinquish it without first having spoken with a lawyer, Oregon recently enacted a requirement that the juvenile court may not accept a young person's waiver of the right to counsel without ensuring they have "met with and been advised regarding the right to counsel by counsel who has been appointed by the court or retained on behalf of the youth."[313]

This was an important development that not only strengthens the right to counsel for youth, but also prevents waiver of counsel by children who are not sufficiently counseled and advised about the dangers of proceeding *pro se*. This removes a significant barrier for youth whose families cannot afford private counsel.[314]

Recent juvenile system reforms

Oregon enacted important changes to its juvenile law in 2019, including many provisions requiring older youth who were previously subjected to automatic adult court treatment to have the law view them and their offenses through a developmental lens.[315]

Senate Bill 1008,[316] which became effective at the end of September 2019 and applies to sentences imposed on or after January 1, 2020, made significant changes concerning the treatment of youth in adult court. Most importantly, the bill eliminated the automatic waiver to adult court of youth aged 15 to 17 charged with certain serious offenses. After the change, youth aged 15 to 17 may only be tried as an adult following a hearing in juvenile court.[317] The new law prohibits youth convicted as adults from receiving a sentence of life without parole,[318] and permits youth to be eligible for a "second look" hearing for conditional release.[319] Youth who are convicted as adults for offenses committed on or after January 1, 2020 are now eligible for parole after 15 years, subject to guidelines requiring the parole board to "consider and give substantial weight to the fact that a person under 18 years of age is incapable of the same reasoning and impulse control as an adult and the diminished culpability of minors as compared to that of adults."[320]

312 IJA-ABA Juvenile Justice Standards, *supra* note 38, at 89-90.
313 Or. Rev. Stat. § 419C.200(2)(a)(B) (2018).
314 *See* NCJFCJ Juvenile Justice Guidelines, *supra* note 39, at ch. XII, 26.
315 Reed, *supra* note 274.
316 *See* S.B. 1008, 79th Legis. Assemb., Reg. Sess. (Or. 2017).
317 Or. Rev. Stat. § 419C.349(1)(a) (2019).
318 Or. Rev. Stat. § 137.707(2) (2020).
319 Or. Rev. Stat. § 137.707(1) (2020). *See* Or. Rev. Stat § 420A.203 (2020), Or. Rev. Stat § 420A.206 (2020) (providing that youth sentenced as an adult may be considered for conditional release if they have a projected release date after their 25th birthday but before their 27th birthday; or if they were sentenced to at least two years, are over 24.5 years old, and have served one-half of their sentence).
320 *See* S.B. 1013, 80th Legis. Assemb., Reg. Sess. (Or. 2019); *See also* S.B. 1008, 79th Legis. Assemb., Reg. Sess. (Or. 2017).

The new changes also require the age of the defendant at the time of the offense to be included in the adult court judgment of conviction.[321] Oregon law already provided that a youth under 18 who is committed to prison after being convicted as an adult may serve their sentence in a youth prison until they turn 25,[322] but another recent change extends that to a person who committed their offense while under 18, but whose proceedings were initiated after their 18th birthday.[323]

In addition to legislation, Uniform Trial Court Rules were changed to assist juvenile courts in complying with recent amendments to the general provisions in the juvenile code that affect all cases within the juvenile court's purview, including delinquency cases. Specifically, the Uniform Trial Court Rules Committee formed a Juvenile Exhibits Work Group to address ongoing problems in the appellate process caused by delay in the transmission of exhibits from the trial court to the court of appeals.[324]

Although there have not been many delinquency appeals in Oregon recently, this is an important step in improving the appellate record and appellate counsel's access to the record when a young person chooses to appeal their delinquency case.[325] More importantly, it is an excellent example of the UTCR Committee working to address a problem that will ensure uniform procedure and access to justice for litigants in Oregon, including youth in delinquency court.

Lastly, House Bill 3261, which took effect January 1, 2020, expanded the requirement that certain custodial interrogations be recorded electronically. Any youth subject to felony- or misdemeanor-level investigations and who are subject to custodial interviews inside a law enforcement facility must be recorded.[326] Interviews conducted in the field by peace officers, school resource officers, or campus security officers must also be recorded if the officer is wearing a body camera.[327]

These strengths and promising practices are consistent with an understanding of young people's capacity for growth and successful development and will provide juvenile defenders new opportunities to provide high-quality and developmentally informed advocacy for Oregon's youth.

321 Or. Rev. Stat. § 137.071(2)(i) (2020); Or. Rev. Stat. § 137.071(5) (2020). *See also* Or. Rev. Stat § 420.011 (2020).
322 Or. Rev. Stat. § 137.124(5)(a)(A) (2020). *See also* Or. Rev. Stat § 420.011 (2020).
323 Or. Rev. Stat. § 137.124(5)(a) (2020).
324 Or. State Bar Pub. Affairs Dep't, 2019 Oregon Legislation Highlights, 4-11 (2019), https://www.osbar.org/_docs/lawimprove/2019LegislationHighlights.pdf; Or. Uniform Trial Court Rules, UTCRs 11.110 (2019), 11.120 (2019). *See also* Or. Rev. Stat. § 419A.255 (2020).
325 *See Oregon Assessment Appeals Data*, *supra* note 197 (reflecting that there were only 23 juvenile delinquency decisions from January 1, 2016 through January 1, 2020 and those decisions were from 26 of Oregon's 36 counties).
326 S.B. 3262, 80th Legis. Assemb., Reg. Sess. (Or. 2019).
327 *Id.*

OPPORTUNITIES FOR CHANGE: A CALL TO ACTION

"Being kind in a system that is unjust is not enough."

—Sister Helen Prejean[328]

RECOMMENDATIONS TO IMPROVE ACCESS TO COUNSEL & QUALITY OF REPRESENTATION

1 Automatically appoint counsel for all youth

Oregon should establish a statewide presumption that children are automatically eligible for the appointment of an attorney based upon their status as children. Systems should be in place locally that guarantee each child has an attorney *prior* to the first time they see a judge, with sufficient time to allow for adequate consultation, given that any decision, even a continuance, may affect a child's liberty interests. Delinquency defense system partners should create statewide and regional processes to prompt attorneys to engage in pre-appointment advocacy to preserve and protect the rights of youth.

2 Abolish all fees and costs associated with access to a publicly funded juvenile defender

Fees and costs associated with publicly funded defense counsel interfere with a child's constitutional right to counsel. Basing a child's right to an attorney on the willingness or ability of their family to pay the fees associated with accessing a "free" attorney does not fulfill the state's obligation of ensuring access to counsel under the United States or Oregon constitutions. All fees and costs associated with the appointment of, and ongoing access to, counsel should be abolished or waived for all children. There should be no fee to apply for counsel, no costs associated with juvenile defense representation, and no attendant fees or costs imposed on youth or families in delinquency court.

3 Appoint all youth a qualified juvenile defender prior to any interrogation or interview by law enforcement or the juvenile department

Attorneys should be automatically appointed before interrogation by law enforcement or the juvenile department's intake interview. In each instance, the child is not immediately free to leave and is subjected to questioning about the alleged offense, which triggers the need for constitutional protections. Without access to a lawyer, children are unjustly exposed to coercive tactics, leading to false confessions or disclosures of information that impair young people's constitutional and statutory rights, and which can be used against them in court.

328 Sister Helen Prejean (@helenprejean), Twitter (Sept. 3, 2017, 8:30 AM), https://twitter.com/helenprejean/status/904366113521364994 (last visited July 16, 2020).

4 Ensure all youth are protected from uninformed waiver of counsel

Oregon law requires consultation with counsel before the court may accept waiver of counsel by a young person. But local practice varies with regard to waiver or pro se representation in status offenses, misdemeanor-level offenses, and probation violation hearings. Moreover, the statute requiring a youth to consult counsel prior to waving counsel does not apply to youth entering a formal accountability agreement. Courts must ensure that youth never waive their rights or proceed without counsel without first consulting with an attorney.

5 Encourage pretrial defense advocacy as part of a fair and effective justice system

Strong pretrial juvenile defense practice, including motions practice and the use of investigators, social workers, and experts, is an essential element of due process. Robust pretrial advocacy can result in more young people being diverted from the system and lead to just and fair case resolutions. All juvenile defenders should have access to resources, as well as the support and oversight, needed to ensure full representation for every client.

6 Ensure juvenile defenders are appointed to provide active advocacy for youth at every stage of the proceedings, including through post-disposition proceedings and appeals

Defense attorneys should be available to youth from the earliest possible moment of system involvement until the child is no longer under the supervision of the court system. Issues such as appeals, probation revocation hearings, modification or early termination of probation hearings, community reentry, conditions of confinement, sex offender deregistration, and expunction are just some of the many areas in which youth need defense advocates to ensure their success. Juvenile delinquency defense system partners should create statewide and regional processes to ensure attorneys appropriately engage in post-disposition representation.

7 Provide ample, accessible, specialized training for juvenile delinquency defenders

Specialized training in juvenile defense provides the necessary foundation for ensuring that every child's right to due process is fully realized. Training should be specific to juvenile court, help defenders develop strong practice and trial skills, become knowledgeable in using youth-specific research and legal precedent, develop the range of expertise needed to effectively represent children, and provide tools to eliminate racial injustice and disparate treatment of vulnerable youth. Training should be accessible, in terms of cost, location, and frequency, to ensure that all attorneys defending youth have sufficient opportunities to attend. OPDS should establish a state-level juvenile training director to oversee, facilitate, and deliver high-quality, specialized training to juvenile defenders across the state.

8 Enforce mandatory state and national performance standards

The Oregon Bar Association has promulgated state defense standards for criminal and juvenile delinquency proceedings that incorporate national juvenile defense standards. OPDS has issued requirements for attorneys practicing in juvenile court that adhere to these standards, but must also be funded to monitor and enforce compliance in a meaningful way, including conducting court observations, interviewing stakeholders, and collecting data.

9 Enforce and support specialization in juvenile delinquency defense

Oregon must support juvenile delinquency defense as a specialization wherever possible, and ensure juvenile defenders' access to resources, support services, and payment on par with defenders in adult court. Even where exclusive delinquency practice is not possible, juvenile defense must be recognized as an area of legal practice that requires expertise, specialized standards of representation, and specialized training. Oregon should establish a state-level juvenile delinquency defense position to offer expertise, monitor practice, and provide mentoring and support to juvenile defense attorneys. OPDS must recruit and develop attorneys who are committed to building proficiency in working with young people and navigating youth-centered delinquency defense services, including developing and maintaining expertise in adolescent development concepts and robust trial advocacy. OPDS should also invest in a state-level juvenile delinquency appellate practice that can deliver a centralized, strategic, and coordinated approach to juvenile delinquency appeals in Oregon.

10 Compensate juvenile defenders for all aspects of juvenile defense at a fair rate

Any disparities in pay between delinquency defense and dependency or criminal defense devalues the critical work of defending young people's rights in the delinquency system. Failing to adequately compensate attorneys for the defense of young people signals to all stakeholders that these children—and their futures—are not worth the investment. Court culture and defense practice are influenced by the value placed on the work of juvenile defenders. The state must increase its funding of delinquency defense services and ensure appropriate allocation of those funds. Juvenile defenders must have adequate personnel and resources and be compensated at reasonable rate for all delinquency court casework.

RECOMMENDATIONS TO IMPROVE JUSTICE & FAIRNESS FOR OREGON'S YOUTH

1 Eliminate all fees and costs related to juvenile court

Beyond costs associated with accessing counsel, Oregon law provides for an astonishing number of fees, fines, and costs associated with juvenile court involvement. These financial obligations defeat the purpose of the juvenile court system, extend and deepen children's involvement in the justice system, and mire youth and families in debt for years after court involvement has ended, while providing no discernable financial benefit to the state or counties. Oregon's youth should benefit from the juvenile justice system, not be responsible for financing it. Until all fees and costs are eliminated in juvenile courts, juvenile defense attorneys must incorporate client-centered litigation against financial obligations into their regular court practice.

2 Eliminate existing racial disparities in the juvenile court system

Existing racial disparities in the Oregon juvenile court system are well-documented. All stakeholders must work on developing concrete strategies to examine the causes of these disparities, including implicit bias. Courts and other high-level stakeholders must consider conducting racial impact studies on policies and practices that lead to disparities across all decision points. Defense attorneys must play their part in the fight against systemic disparities by raising the disparate treatment of youth of color in their advocacy with decisionmakers and throughout the representation of individual clients.

3 Enact rules of procedure for delinquency matters

Oregon has provided clear guidance for court procedure in civil, criminal, and dependency proceedings. Rules of procedure for delinquency matters will provide guidance to courts and ensure consistency and access to justice for all of Oregon's children. Litigants in delinquency court should have the benefit of uniform procedure intended to ensure that hearings measure up to constitutional and statutory mandates and should not access justice differently based upon where they live or the courtroom in which they appear.

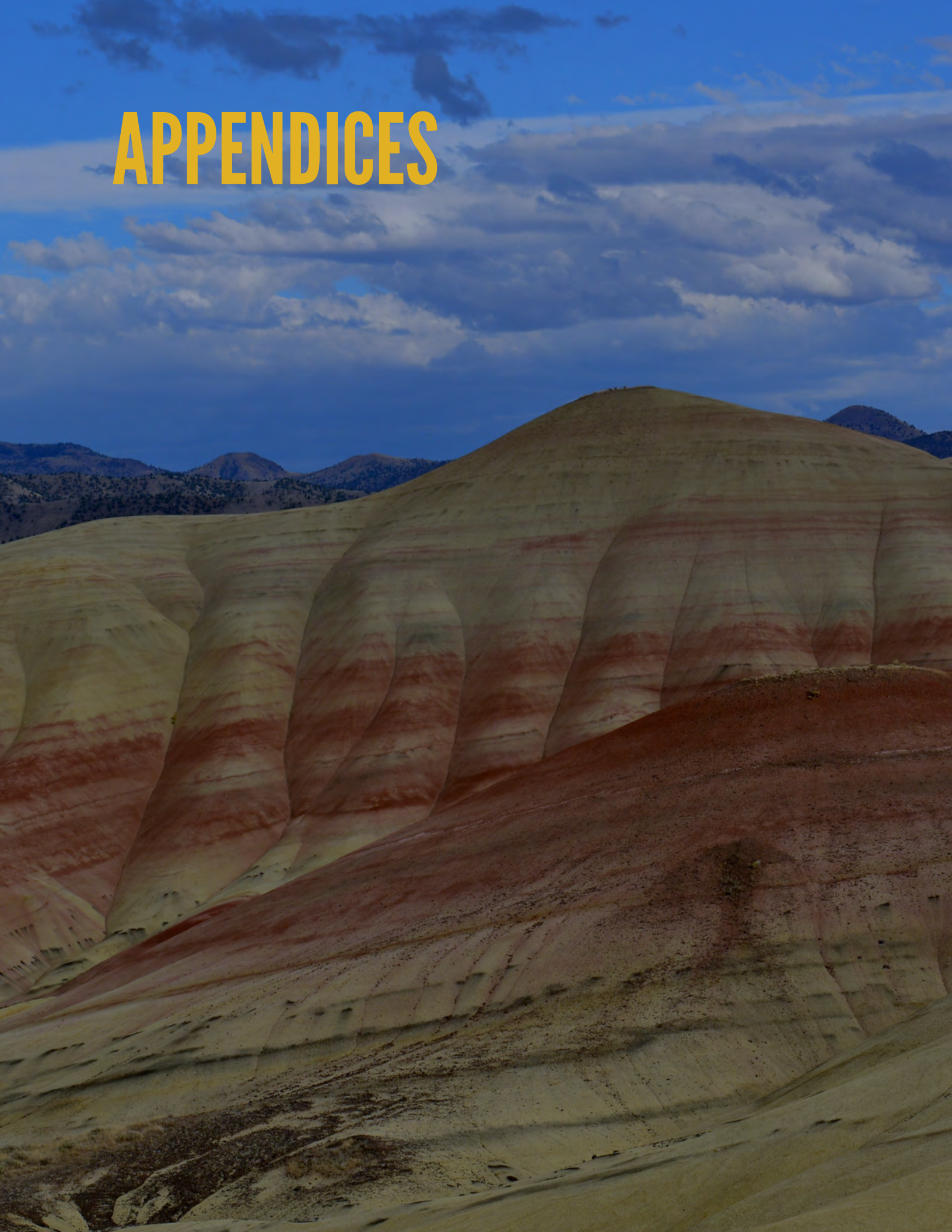
4 Enact automatic record clearance provisions

Collateral consequences of juvenile court involvement create significant barriers to future opportunities, Oregon's expunction provisions are too restrictive, and too few youth exercise the rights to expunction that they may not even know they have. Record clearance is an important step in a child's journey toward rehabilitation and should occur automatically. Oregon's system is currently set up so that almost every youth seeking record clearing must navigate that system without the assistance of an attorney.

5 Collect and analyze defense performance and outcomes data

Every county should collect data about whether and at what point youth are appointed counsel and other defense data related to waiver of counsel; motions filed; experts used; pleas versus trials; racial, ethnic, and other demographic data; and disposition and other case outcome information to analyze juvenile defense practices and ensure the juvenile defense system measures up to the constitutional requirement that youth receive a vigorous defense from qualified attorneys. Defense offices have an independent duty to collect and analyze such data among their own client cases, in order to inform individual and overall juvenile defense strategy.

APPENDICES



RELEVANT DATA & STATISTICS

Demographics

According to the U.S. Census Bureau, Oregon's estimated population reached 4,217,737 in 2019.[329] In 2018, the U.S. Census Bureau estimated that 5.6 percent of the total state population was under the age of five and 20.8 percent was under the age of 18.[330] According to the U.S. Census Bureau's most recent population estimate, 75.3 percent of the population is Non-Hispanic White, 13.3 percent is Hispanic, 4.8 percent is Asian, 2.2 percent is Black, 1.8 percent is American Indian/Alaska Native, 0.5 percent is Native Hawaiian/Pacific Islander, and 3.9 percent is two or more races.[331]

Delinquency Case Filings

In Oregon, the juvenile court can exercise jurisdiction over youth alleged to have committed offenses before age 18.[332] There is no minimum age for juvenile court jurisdiction. According to U.S. Census data, the population of children in Oregon aged five to 17 in 2018 was 639,353.[333]

In 2018, 6,931 youth were referred to juvenile court for acts that would constitute crimes if committed by an adult and 4,631 for non-criminal acts and status offenses.[334] Of those youth, 9 percent were aged 12 and younger, 45.4 percent were 13 to 15, and 45.5 percent were 16 and older.[335] Of all youth referred, girls comprised 35.8 percent, boys 63.7percent, and 0.4% unknown.[336] Of the cases referred, 39.4 percent were reviewed and closed and 33.9 percent were processed through diversion or other informal disposition.[337] Of the total number of youth referred, 26.7 percent or 3,163 were petitioned.[338]

Of those who were petitioned, 468 were dismissed; 166 were resolved without a delinquency through plea bargain or alternative process; 2,374 were adjudicated delinquent; and 155 were processed through adult court.[339] Of the youth adjudicated delinquent, 323 (14 percent) were given a formal sanction; 1,640 (69 percent) were placed on probation; 5 (0.02 percent) were placed on probation with custody to a non-OYA agency; 185 (8 percent) were placed on probation with OYA commitment to community placement; and 221 (9 percent) were committed to an OYA correction facility.[340]

329 *QuickFacts: Oregon*, U.S. Census Bureau, https://www.census.gov/quickfacts/OR (last visited May 8, 2020).
330 *Id.*
331 *Id.*
332 Or. Rev. Stat. § 419C.005(4)(d) (2020).
333 Children First for Or., 2019 County Data Book, Status of Oregon Children and Families 6, 43 (2019), https://www.cffo.org/wp-content/uploads/2019/11/CFFO-County-Data-2019.pdf (last visited July 16, 2020).
334 Youth and Referrals, *supra* note 222.
335 *Id.* at 8.
336 *Id.*
337 Dispositions, *supra* note 308.
338 *Id.* at 1.
339 *Id.* at 2.
340 *Id.* at 1.

SUMMARY OF RELEVANT OREGON LAW

The Right to Counsel

Beyond the right to counsel guaranteed by the Due Process Clause of the United States Constitution and *In re Gault*, in juvenile court, youth have the right to appointed counsel in delinquency cases once a petition is filed alleging a criminal offense, in a proceeding concerning an order of probation, or in any case in which the youth would be entitled to appointed counsel if the youth were an adult charged with the same offense.[341] The court may appoint counsel for any youth in any proceeding under the juvenile court's jurisdiction and must make a determination that the youth and their parents or guardians are financially unable to employ suitable counsel under the Public Defense Commission's policies, standards, and guidelines.[342]

The accused youth and the state are the parties to the adjudicatory hearing.[343] At the dispositional stage, the parents or guardian of the youth are also parties.[344] Parties have the right to appointed counsel "if otherwise provided by law."[345]

A child is specifically entitled to counsel at the following proceedings:

- "[P]rior to the youth's entering into a formal accountability agreement;"[346]
- Adjudicatory hearing;[347]
- Disposition;[348]
- Waiver to adult court hearings;[349]
- Proceeding concerning an order of probation;[350]
- Detention hearing;[351] and
- Appeal.[352]

Public Defense System

The Public Defense Services Commission (PDSC) is an independent state agency in the judicial branch of government that governs the Office of Public Defense Services (OPDS).[353] The commission's primary responsibility is to establish and maintain the state's public defense system through OPDS, which oversees management of the public defense system and is responsible for providing counsel to indigent adults and

341 Or. Rev. Stat. § 419C.200(1)(a) (2018).
342 Or. Rev. Stat. § 419C.200(1)(a)(D) (2018); Or. Rev. Stat. § 419C.005 (2020); Or. Rev. Stat. § 419C.200(1)(b) (2018); Or. Rev. Stat. § 419C.203 (2012); Or. Rev. Stat. § 419C.206 (2003). *See also* Or. Rev. Stat. § 419C.209 (2003); Or. Rev. Stat. § 135.055 (2003); Or. Rev. Stat. § 151.216 (2018); Or. Rev. Stat. § 151.219 (2003).
343 Or. Rev. Stat. § 419C.285(1) (2015).
344 Or. Rev. Stat. § 419C.285(1)(a) (2015).
345 Or. Rev. Stat. § 419C.285(2)(b) (2015).
346 Or. Rev. Stat. § 419C.245(1) (2018).
347 Or. Rev. Stat. § 419C.285(1)-(2) (2015).
348 Or. Rev. Stat. § 419C.352(1) (2020).
349 Or. Rev. Stat. § 419C.285(1)-(2) (2015).
350 Or. Rev. Stat. § 419C.200(1)(a)(B) (2018).
351 Or. Rev. Stat. § 419C.109(3)(b)(A) (1999).
352 Or. Rev. Stat. § 419A.211(1) (2012); Or. Rev. Stat. § 419A.200(1) (2014); Or. Rev. Stat. § 419C.285(2)(d) (2015); Or. Rev. Stat. § 419A.208(1) (2003).
353 Or. Rev. Stat. § 151.213 (2003); Or. Rev. Stat. § 151.219 (2003). *See also Who We Are*, Or. Office of Pub. Def. Servs, https://www.oregon.gov/opds/Pages/about.aspx (last visited May 8, 2020).

children in Oregon's trial and appellate courts, and for processing payments for fees and expenses concerning such representation.[354] While the state funds this appointed counsel system in the state courts, local governments are responsible for funding and providing counsel at any county or local justice and municipal courts.[355]

PDSC and OPDS provide counsel for eligible adults and children through a combination of state-employed attorneys; contracts with private attorneys, consortia of attorneys, and for- and non-profit law offices and organizations; and on a case-by-case basis with private attorneys. [356]

Judicial System

The Oregon Judicial Branch is comprised of the Oregon Supreme Court, the Court of Appeals, and the trial courts. [357] Oregon's 36 counties are divided into 27 judicial districts, each of which has a state-established and funded circuit court.[358] The circuit courts, with their elected judges,[359] have jurisdiction over trials in all civil, juvenile and family-related matters, and criminal cases and appeals from any justice or municipal courts in their region that are not courts of record.[360]

The juvenile courts may appoint juvenile court referees to preside over juvenile court matters, subject to review and rehearing by a juvenile court judge.[361]

Probation & Parole Services

Juvenile probation services are provided by each county,[362] and intensive probation services and parole are provided at the state level by the Oregon Youth Authority.[363]

Detention & Correction Facilities

Youth may be held in local detention facilities after initial arrest or custody, pending the outcome of juvenile delinquency proceedings.[364] For disposition, the court may order a young person to be placed in a detention facility for no more than eight days unless the commitment meets certain criteria allowing a youth to be placed for a maximum of 30 days.[365]

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354 *Id.*
355 *See* The Right to Counsel in Oregon, *supra* note 10, at 18.
356 *Id.* at 17-28.
357 *See About the Oregon Judicial Department*, Or. Judicial Branch, https://www.courts.oregon.gov/about/Pages/default.aspx (last visited May 8, 2020).
358 Or. Const. art. VII, § 9; Or. Rev. Stat. § 3.012 (1999); Or. Rev. Stat. § 1.001 (1981); Or. Rev. Stat. § 1.185 (1981); Or. Rev. Stat. § 1.187 (1981).
359 Or. Const. art. VII, § 1.
360 Or. Const. art. VII, § 9 (given the status of a statute and subject to change by statute, pursuant to Or. Const. art. VII, § 2); Or. Rev. Stat. § 3.130 (1969); Or. Rev. Stat. § 3.132 (1997); Or. Rev. Stat. § 3.136 (1999); Or. Rev. Stat. § 3.255 (1967); Or. Rev. Stat. § 3.260 (2014); Or. Rev. Stat. § 3.265 (1995); Or. Rev. Stat. § 3.270 (1995); Or. Rev. Stat. § 3.405 (1995); Or. Rev. Stat. § 157.005 (1999); Or. Rev. Stat. § 157.010 (1995); Or. Rev. Stat. § 221.359 (2003).
361 Or. Rev. Stat. § 419A.150 (2003).
362 *See* Or. Rev. Stat. § 419A.010 (2019); Or. Rev. Stat. § 419A.012 (2003); Or. Rev. Stat. § 419A.020 (2003).
363 Or. Rev. Stat. § 420.019(2)(a) (1997). *See also OYA Community Services – Parole and Probation,* Or. Youth Auth., https://www.oregon.gov/oya/paroleprobation/Pages/default.aspx (last visited July 17, 2020).
364 Or. Rev. Stat. § 45.275(1)-(2) (2015); Or. Rev. Stat. § 419C.080 (2001); Or. Rev. Stat. § 419C.097 (2008); Or. Rev. Stat. § 419C.100 (2008); Or. Rev. Stat. § 419C.125 (2003); Or. Rev. Stat. § 419C.133 (2001); Or. Rev. Stat. § 419C.136 (1995); Or. Rev. Stat. § 419C.139 (1999); Or. Rev. Stat. § 419C.142 (2008); Or. Rev. Stat. § 419C.145 (2008); Or. Rev. Stat. § 419C.150 (2014); Or. Rev. Stat. § 419C.153 (2008); Or. Rev. Stat. § 419C.170 (1995); Or. Rev. Stat. § 419C.173 (2008).
365 Or. Rev. Stat. § 419C.453(1) (2012).

Youth aged 12 and older may be committed to an Oregon Youth Authority correctional facility.[366] There are four facilities that house boys and one that houses girls, as well as four youth transitional facilities across the state.[367]

Oregon's Juvenile Code

Some aspects of delinquency proceedings in Oregon are governed by Oregon's Juvenile Code,[368] the Oregon Rules of Criminal Procedure,[369] Oregon's Uniform Trial Court Rules (UTCRs),[370] local court rules,[371] and caselaw.

Purpose Clause

The purpose of the juvenile system in delinquency cases is outlined as follows:

> The Legislative Assembly declares that in delinquency cases, the purposes of the Oregon juvenile justice system from apprehension forward are to protect the public and reduce juvenile delinquency and to provide fair and impartial procedures for the initiation, adjudication and disposition of allegations of delinquent conduct. The system is founded on the principles of personal responsibility, accountability and reformation within the context of public safety and restitution to the victims and to the community. The system shall provide a continuum of services that emphasize prevention of further criminal activity by the use of early and certain sanctions, reformation and rehabilitation programs and swift and decisive intervention in delinquent behavior. The system shall be open and accountable to the people of Oregon and their elected representatives.[372]

Juvenile Court Jurisdiction

Oregon's juvenile courts have exclusive original jurisdiction in cases involving a person under 18 who has committed an act that if committed by an adult would constitute a violation of law or ordinance.[373] Juvenile court jurisdiction attaches at the time a youth is taken into custody.[374] The juvenile court can retain jurisdiction over youth until age 25 for offenses alleged to have been committed before the youth turned 18.[375] There is no statute that provides a minimum age for juvenile court jurisdiction.

366 Or. Rev. Stat. § 419C.478(1)-(6) (2005) (providing for custody, the findings required, the considerations made pursuant to ORS 419C.411 (2018) and the responsibilities of the court and the departments). *See also* Or. Rev. Stat. § 419C.481 (2003); Or. Rev. Stat. § 419C.486 (2005); Or. Rev. Stat. § 419C.489 (2003); Or. Rev. Stat. § 419C.492 (1995); Or. Rev. Stat. § 419C.495 (1999) (outlining the responsibilities of the court and the Youth Authority for youth so committed).

367 *OYA Community Services – About OYA Facilities,* Or. Youth Auth., https://www.oregon.gov/oya/pages/facility_services.aspx#About_OYA_Facilities (last visited May 8, 2020).

368 Or. Rev. Stat. § 419C.001 (2007) through 419C.680 (1997).

369 Oregon does not have state-wide rules of procedure for the juvenile courts, but certain rules of criminal procedure apply as per Or. Rev. Stat. § 419C.270 (2020) (incorporating rules regarding evidentiary exclusion, electronic recording of custodial interviews with law enforcement, pleadings and related procedure, demurrers, sufficiency of accusatory instruments, pretrial discovery, and evidence).

370 Or. Uniform Trial Court Rules, UTCR 11.010 (2006); Or. Uniform Trial Court Rules, UTCR 11.020 (2006); Or. Uniform Trial Court Rules, UTCR 11.040 (2006); Or. Uniform Trial Court Rules, UTCR 11.060 (2015); Or. Uniform Trial Court Rules, UTCR 11.110 (2019); Or. Uniform Trial Court Rules, UTCR 11.120 (2019).

371 *Supplementary Local Court Rules,* Or. Judicial Branch, https://www.courts.oregon.gov/rules/Pages/slr.aspx, (last visited May 8, 2020).

372 Or. Rev. Stat. § 419C.001(1) (2007); *see also* Or. Rev. Stat. § 419C.001(2)(a) (2007) (providing for audits of programs, policies, and services provided by the code: "Programs, policies and services shall be regularly and independently audited. Audits performed under this subsection must include program audits and performance audits, as defined in ORS 297.070.").

373 Or. Rev. Stat. § 419C.005(1) (2020).

374 Or. Rev. Stat. § 419C.094 (1999).

375 Or. Rev. Stat. § 419C.005(4)(d) (2020).

Custody & Initial Detention

Youth may be taken into custody under the same circumstances that an adult could be arrested, or pursuant to a summons ordered by the juvenile court and supported by a finding that custody is in the best interest of the child.[376] Such custody is not deemed to be an arrest.[377] If there is probable cause to believe that the youth has possessed a firearm or destructive device while in a public building or court facility within the last 120 days, the youth shall be taken into custody.[378] Youth may be issued a citation in lieu of taking them into custody under the same circumstances as if they were an adult.[379]

Diversion

A county juvenile department may refer youth to an authorized diversion program.[380] A youth court, peer court, teen court, or peer jury program may be established by written agreement with the county juvenile department.[381]

Youth may be eligible to enter into a formal accountability agreement in exchange for not having a petition filed.[382] These agreements may include required counseling, community service, restitution, or that the youth undergo mental health evaluations and treatment.[383] Such an agreement may be modified or extended by the juvenile department, or an adjudication hearing for revocation may be held.[384] Youth have the right to counsel, if eligible, prior to entering into a formal accountability agreement.[385]

Appointment of Counsel

The court may appoint counsel for any youth in any proceeding under the juvenile court's jurisdiction.[386] To appoint counsel, the court must make a determination that the youth and their parents or guardians are financially unable to employ suitable counsel under the Public Defense Commission's policies, standards, and guidelines.[387] The accused youth and the state are the parties to the adjudicatory hearing.[388] At the dispositional stage, the parents or guardian of the youth are also parties.[389] Parties have the right to appointed counsel "if otherwise provided by law."[390]

376 Or. Rev. Stat. § 419C.080(1)-(2) (2001); *see also* Or. Rev. Stat. § 419C.088 (1997) (providing that a young person may also be taken into custody by a private person in circumstances where an adult could be arrested by a private person).
377 Or. Rev. Stat. § 419C.091(1) (1997).
378 Or. Rev. Stat. § 419C.080(3) (2001); *see also* Or. Rev. Stat. § 419C.109(3) (1999) (providing requirements for the detention hearing for such youth).
379 Or. Rev. Stat. § 419C.085 (2001).
380 Or. Rev. Stat. § 419C.225 (2010).
381 Or. Rev. Stat. § 419C.226 (2001).
382 Or. Rev. Stat. § 419C.230 (2008); Or. Rev. Stat. § 419C.233 (1995); Or. Rev. Stat. § 419C.239 (2017).
383 Or. Rev. Stat. § 419C.236 (1995); Or. Rev. Stat. § 419C.237 (2001).
384 Or. Rev. Stat. § 419C.242 (1995).
385 Or. Rev. Stat. § 419C.245 (2018).
386 Or. Rev. Stat. § 419C.200(1)(a)(D) (2018); Or. Rev. Stat. § 419C.005 (2020).
387 Or. Rev. Stat. § 419C.200(1)(b) (2018); Or. Rev. Stat. § 419C.203 (2012); Or. Rev. Stat. § 419C.206 (2003). *See also* Or. Rev. Stat. § 419C.209 (2003); Or. Rev. Stat. § 135.055 (2003); Or. Rev. Stat. § 151.216 (2018); Or. Rev. Stat. § 151.219 (2003).
388 Or. Rev. Stat. § 419C.285(1) (2015).
389 *Id*.
390 Or. Rev. Stat. § 419C.285(2)(b) (2015).

Petition

A petition in juvenile court may be filed by the district attorney, the Attorney General, or, when authorized by the district attorney, a juvenile department counselor.[391] The petition must contain known facts about the name, age, and residence of the youth; the facts that establish jurisdiction of the court; information about the youth's parents or guardian; information about a person alleged to be injured or suffering a loss as a result of the alleged conduct; and any such facts not known.[392] A petition may be amended on motion of an interested party or by the court.[393] The court may set aside or dismiss a petition in furtherance of justice.[394]

An investigation of the circumstances of a youth must begin promptly after a petition is filed, and a summons may be issued no later than 60 days after filing.[395] The summons must contain a statement of the facts and provide notice that the youth's parent or person obligated to support the youth may be required to pay for support of the youth, including out-of-home placement, depending upon their ability to pay.[396] The summons requires appearance of the youth and their parent or custodian, and any other person deemed necessary, to attend a hearing scheduled not less than 24 hours after the summons is issued.[397] If the summons cannot be served or if the persons summoned fail to appear, the court may issue a warrant of arrest against the persons summoned.[398]

Discovery

The juvenile code specifically provides that the criminal procedure laws relating to pretrial discovery apply in all delinquency proceedings.[399] The prosecution must disclose certain witness information, statements, recordings, and other information pertinent to the case that is in the government's possession, as well as anything that may be exculpatory or may mitigate the youth's involvement in the charged offense,[400] and any information about the occurrence of a search or seizure.[401]

The defense also has corresponding duties to disclose information to the prosecution, including witnesses and witness statements and recordings or other information about witnesses it intends to call at trial.[402] Time for disclosure provisions and duties concerning subsequent additional information apply to both the prosecution and the defense.[403]

391 Or. Rev. Stat. § 419C.250(1) (1999).
392 Or. Rev. Stat. § 419C.255 (2008).
393 Or. Rev. Stat. § 419C.261(1) (2009).
394 Or. Rev. Stat. § 419C.261(2) (2009).
395 Or. Rev. Stat. § 419C.300 (1993).
396 Or. Rev. Stat. § 419C.303 (1993).
397 Or. Rev. Stat. § 419C.306 (2003).
398 Or. Rev. Stat. § 419C.320 (1993).
399 Or. Rev. Stat. § 419C.270(5)-(6) (2020) (providing that Or. Rev. Stat. § 135.815(1)(a)-(e), (g) (2020), Or. Rev. Stat. § 135.815(3) (2020), Or. Rev. Stat. § 135.825 (1999), Or. Rev. Stat. § 135.835 (1999), Or. Rev. Stat. § 135.845 (1999), Or. Rev. Stat. § 135.855 (2007), and Or. Rev. Stat. § 135.865 (1999) regarding pretrial discovery apply to proceedings brought under the jurisdiction of the juvenile court pursuant to Or. Rev. Stat. § 419C.005 (2020)).
400 Or. Rev. Stat. § 135.815(1)(a)-(e), (g) (2020); Or. Rev. Stat. § 135.815(3) (2020); Brady v. Maryland, 373 U.S. 83 (1963).
401 Or. Rev. Stat. § 135.825 (1999).
402 Or. Rev. Stat. § 135.835 (1999).
403 Or. Rev. Stat. § 135.845 (1999).

Shackling

> Instruments of physical restraint, such as handcuffs, chains, irons, straitjackets, cloth restraints, leather restraints, plastic restraints and other similar items, may not be used during the juvenile court proceeding and must be removed prior to the youth, youth offender or young person being brought into the courtroom unless the court finds that the use of restraints is necessary due to an immediate and serious risk of dangerous or disruptive behavior and there are no less restrictive alternatives that will alleviate the immediate and serious risk of dangerous or disruptive behavior.[404]

In determining whether "an immediate and serious risk of dangerous or disruptive behavior" exists, the court can consider the youth's behavioral history, potential to cause physical harm to self or others, and potential for risk of flight.[405] Law enforcement must submit a written request for the use of restraints prior to a hearing, and the court must provide the youth and their counsel an opportunity to be heard before making written findings in support of any order requiring restraints.[406] Any restraints ordered and used must provide the youth movement of their hands so they are able to handle, read, and write on documents.[407]

Restraints may not be used for convenience, as a substitute for staff supervision, or as punishment.[408] Youth may never be restrained to a stationary object or another person.[409]

Appointment of Interpreters

There is no specific provision under Oregon law for the appointment of interpreters in juvenile court. When it is deemed necessary, the court may appoint an interpreter.[410] A fee may not be charged to a person who needs an interpreter[411] and the interpreter must be paid pursuant to ORS 45.275(3).

Detention Determinations

Youth under 12 years of age may be placed in detention, subject to special review and judicial findings.[412] Youth 18 years of age or older who are detained and under the jurisdiction of the juvenile court may be detained in a facility with adults, but are subject to all of the rights and procedures that apply to youth in custody.[413]

A youth taken into custody must be released to a parent or responsible person unless the court has issued an arrest warrant against the youth; there is probable cause to believe that release would endanger the youth, the victim, or others; or there is probable cause to believe that the youth possessed a firearm or destructive device in violation of the law.[414] The youth's parents or other responsible person must be notified of the youth's custody and the time and place of any hearing as soon as practicable after the youth is taken into custody.[415]

404 Or. Rev. Stat. § 419A.240(1)(a) (2018); *see also* Or. Rev. Stat. § 419A.245(1)(a)(A) (2019) (allowing for the use of restraints during secure transportation to a detention facility or other secure facility).
405 Or. Rev. Stat. § 419A.240(2) (2018).
406 Or. Rev. Stat. § 419A.240(4)-(5) (2018).
407 Or. Rev. Stat. § 419A.240(6) (2018).
408 Or. Rev. Stat. § 419A.240(7) (2018).
409 Or. Rev. Stat. § 419A.240(6) (2018).
410 Or. Rev. Stat. § 45.275(1) (2015).
411 Or. Rev. Stat. § 45.275(2) (2015).
412 Or. Rev. Stat. § 419C.133 (2001).
413 Or. Rev. Stat. § 419C.125 (2003).
414 Or. Rev. Stat. § 419C.100 (2008).
415 Or. Rev. Stat. § 419C.097 (2008).

Youth may be held in pre-trial detention if they are on probation or conditional release following an adjudication and there is probable cause to believe they violated a term of release.[416] Youth may also be held if there is probable cause to believe the youth is a fugitive, injured another person, committed misdemeanor-level disorderly conduct in the first degree, has previously failed to appear, is alleged to have a firearm, or to protect the alleged victim if there are no less restrictive means to assure the youth will return to court or that the youth presents a danger to themselves, another person, or the community.[417] A youth must be held if there is probable cause to believe they committed an offense that would be a violent felony if committed by an adult and there is "clear and convincing evidence that the youth poses a danger of serious physical injury to or sexual victimization of the victim or members of the public while the youth is on release."[418]

The juvenile code specifies that the finding of probable cause must be in writing.[419] There is no other requirement that the court make a probable cause finding for youth who are not detained or subject to pre-trial release.

Youth may be held for up to 36 hours to allow for the development of a release plan to ensure youth safety and return to court, and no youth may be held in detention or shelter care for more than 36 hours excluding weekends and holidays, except upon order of the court after a hearing.[420] Notice of the hearing must be given to the youth, the parent, guardian, or other person responsible for the youth, and the victim, if applicable.[421] Thereafter, youth may be held for a maximum period of 28 days, subject to one additional 28-day extension for good cause shown, or otherwise as ordered by the court.[422] Most detained youth are subject to a review hearing every 10 days, excluding weekends and holidays.[423]

Waiver of Counsel

A court may not accept a waiver of counsel by a youth except under the following circumstances:[424]

- The youth is at least 16 years of age;[425]
- The youth has met with and been advised regarding the right to counsel by counsel who has been appointed by the court or retained on behalf of the youth;[426]
- A written waiver, signed by both the youth and the youth's counsel, is filed with the court;[427] and
- A hearing is held on the record where the youth's counsel appears and the court, after consulting with the youth, finds the waiver was knowingly, intelligently, and voluntarily made and not unduly influenced by the interests of others, including the interests of the youth's parents or guardians.[428]

416 Or. Rev. Stat. § 419C.145(1)(d)-(e) (2008).
417 Or. Rev. Stat. § 419C.145(1)-(2) (2008).
418 Or. Rev. Stat. § 419C.145(1)(d)-(e) (2008).
419 Or. Rev. Stat. § 419C.145(1), (2), (5) (2008).
420 Or. Rev. Stat. § 419C.136 (1995); Or. Rev. Stat. § 419C.170 (1995); Or. Rev. Stat. § 419C.139 (1999); Or. Rev. Stat. § 419C.173 (2008).
421 Or. Rev. Stat. § 419C.142 (2008).
422 Or. Rev. Stat. § 419C.150 (2014).
423 Or. Rev. Stat. § 419C.153 (2008).
424 Or. Rev. Stat. § 419C.200(2)(a)(A)-(D), Or. Rev. Stat. § 419C.200(2)(b) (2018) (noting subsection (a) does not apply to a youth entering into a formal accountability agreement under Or. Rev. Stat. § 419C.230 (2008)).
425 Or. Rev. Stat. § 419C.200(2)(a)(A) (2018).
426 Or. Rev. Stat. § 419C.200(2)(a)(B) (2018).
427 Or. Rev. Stat. § 419C.200(2)(a)(C) (2018).
428 Or. Rev. Stat. § 419C.200(2)(a)(D) (2018).

Caselaw provides clarificaion of the waiver-of-counsel provisions in the code: "The court ha[s] an obligation to advise [the] child of [their] right to have counsel present and, if [they choose] to waive that right, to make a record that clearly indicates that child's decision is the product of an intelligent and understanding choice."[429] The court must not only inform the child of the consequences of waiving counsel, but also notify the child of the benefits of having counsel and the responsibility of waiving their right.[430]

Adjudication Hearings

Children do not have the right to a jury trial, and the standard of proof is beyond a reasonable doubt, unless admitted.[431] If the youth files written notice that they intend to rely on a qualifying mental disorder as an affirmative defense, the child has the burden of proof as to the defense by a preponderance of the evidence.[432] Reports or other evidence relating to the youth for purposes of disposition may be submitted to the court without regard to the rules of evidence.[433] An adjudication is not a conviction.[434] Witnesses are subject to subpoena, and witness costs must be borne by the party requesting the subpoena.[435]

If a youth is summonsed or cited for underage purchase or possession of alcohol or marijuana and fails to appear before the court, the court may adjudicate the citation or petition and enter a disposition without a hearing.[436] At the end of the hearing, the court must enter an order directing disposition to be made.[437]

Guilty Pleas

Oregon has no statewide juvenile court rules of procedure, no statute in the juvenile delinquency code that governs the juvenile court equivalent of guilty pleas, and has not adopted or adapted a rule of criminal procedure to govern the entry of admission procedure in juvenile courts.

Disposition

In determining disposition, the court must consider the following:

- The gravity of the loss, damage, or injury caused or attempted during, or as part of, the conduct;
- Whether the manner in which the youth engaged in the conduct was aggressive, violent, premeditated, or willful;
- Whether the youth was held in preadjudication detention and, if so, the reasons for the detention;
- The immediate and future protection required by the victim, the victim's family, and the community; and
- The youth's juvenile court record and response to the requirements and conditions imposed by previous juvenile court orders.[438]

429 State *ex rel*. Juvenile Dep't Linn Cnty. v. Anzaldua, 109 Or. App. 617, 871 (1991).
430 State *ex rel*. Juvenile Dep't of Marion Cnty. v. Afanasiev, 674 Or. App. 1199, 1201 (1984). See State v. Verna, 498 Or. App. 793 (1972) (holding that the court must determine that a youth understands "the nature of the charge, the elements of the offense, the punishments which may be exacted" and that "it would be good practice to inform him of some of the pitfalls of defending himself, the possible advantage that attorney would provide, and the responsibility defendant incurs by undertaking his own defense.").
431 Or. Rev. Stat. § 419C.400(1)-(2) (2007).
432 Or. Rev. Stat. § 419C.400(3) (2007).
433 Or. Rev. Stat. § 419C.400(4) (2007).
434 Or. Rev. Stat. § 419C.400(5) (2007).
435 Or. Rev. Stat. § 419C.405 (1993); Or. Rev. Stat. § 419C.408 (2003).
436 Or. Rev. Stat. § 419C.420 (2017).
437 Or. Rev. Stat. § 419C.411(1) (2018).
438 Or. Rev. Stat. § 419C.411(3)(a)-(e) (2018).

In addition to the required disposition factors, the court may consider the following:

- Whether the youth has made efforts toward reform, rehabilitation, or restitution;
- The youth's educational status and attendance record;
- The youth's employment or employment history;
- The disposition proposed by the youth;
- The recommendations of the district attorney, the juvenile court counselor, and the victim and the victim's family;
- The youth's mental, emotional, and physical health and any results of mental health or substance abuse treatment; and
- Any other relevant factors or circumstances.[439]

The court can impose as disposition or as a condition of probation any of the following:[440]

- restitution; [441]
- a period of detention;[442]
- fines;[443]
- a supervision fee;[444]
- community service;[445]
- victim service;[446] and
- the youth to submit to blood or buccal testing.[447]

For youth who have been adjudicated for certain offenses against animals, the court may additionally require the youth to submit to a psychiatric, psychological, or mental health evaluation and treatment.[448] The court may additionally order special disposition for youth who have been adjudicated for certain graffiti offenses.[449] The court may order the suspension of driving privileges in limited circumstances.[450] For youth adjudicated of sexual offenses or an act in which body fluids were transmitted, the court shall order the youth to submit to HIV testing at the victim's or victim's parents' request.[451]

In addition to an order of probation or any other order, the court may place a youth aged 12 years or older in the custody of the Oregon Youth Authority or Department of Human Services.[452] Youth in state or local custody should be provided opportunities to pay restitution, perform community service, and otherwise fulfill their court-ordered obligations.[453]

439 Or. Rev. Stat. § 419C.411(4)(a)-(g) (2018).
440 Or. Rev. Stat. § 419C.446(1)-(2) (2012).
441 Or. Rev. Stat. § 419C.450 (2008).
442 Or. Rev. Stat. § 419C.453 (2012).
443 Or. Rev. Stat. § 419C.459 (2012).
444 Or. Rev. Stat. § 419C.449 (2003).
445 Or. Rev. Stat. § 419C.462 (2003).
446 Or. Rev. Stat. § 419C.465 (2003).
447 Or. Rev. Stat. § 419C.473 (2019).
448 Or. Rev. Stat. § 419C.441 (2003).
449 Or. Rev. Stat. § 419C.461 (2003).
450 Or. Rev. Stat. § 419C.472 (2017).
451 Or. Rev. Stat. § 419C.475 (2020).
452 Or. Rev. Stat. § 419C.478(1)-(6) (2005) (providing for custody, the findings required, the considerations made pursuant to Or. Rev. Stat. § 419C.411 (2018) and the responsibilities of the court and the departments). *See also* Or. Rev. Stat.§ 419C.481 (2003), Or. Rev. Stat. § 419C.486 (2005), Or. Rev. Stat. § 419C.489 (2003), Or. Rev. Stat. § 419C.492 (1995), Or. Rev. Stat. § 419C.495 (1999) (outlining the responsibilities of the court and the Youth Authority for youth so committed).
453 Or. Rev. Stat. § 419C.470 (2012).

Dispositions must be imposed pursuant to the statutory guidelines in the code, but commitments to the Department of Human Services, the Oregon Youth Authority, or the Psychiatric Security Review Board must be for an indefinite term.[454]

Except for youth sentenced for committing murder or aggravated murder, no period of disposition for a youth in juvenile court may extend past a youth's 25th birthday.[455] For youth placed on probation, the term is for a period no longer than five years or beyond a youth's 23rd birthday.[456] In addition to or in lieu of any other disposition, a court may direct that a youth be examined and receive medical, psychological, psychiatric, or other care or placement.[457]

Subject to some statutory guidelines, juvenile courts may modify or set aside any order.[458] Youth may also petition the court to set aside any order or decision of the court.[459]

Fees, Financial Sanctions, & Restitution

Under Oregon law, the appointment of counsel for youth "requires the court's determination that the youth or the youth's parents or guardians are without sufficient financial means to employ suitable counsel…."[460] If financially able, the youth, parent, or guardian may be ordered to pay, "in full or in part the administrative costs of determining the ability of the youth, parents or estate to pay for legal services and the costs of the legal and other services that are related to the provision of appointed counsel."[461] "In determining whether to order the youth to pay costs [for appointed counsel] the court shall also consider the reformative effect of having the youth pay."[462] Any payments are made through the clerk to the Public Defense Services Account.[463]

Youth and their family may be ordered to pay the cost of mental health assessment or screening,[464] the testing of blood or buccal samples,[465] and HIV testing.[466]

As part of disposition, youth and their family may be ordered to pay costs and expenses for medical care of any child held in detention, in a correctional facility, or in the custody of DHS;[467] the cost of education and counseling;[468] a supervision fee;[469] and support, even for children over 18.[470]

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454 Or. Rev. Stat. § 419C.501(1) (2019).
455 *Id.*
456 Or. Rev. Stat. § 419C.504 (1995).
457 Or. Rev. Stat. § 419C.507 (2009).
458 Or. Rev. Stat. § 419C.610(1)-(2) (2001). *See also* Or. Rev. Stat. § 419C.613 (2003); Or. Rev. Stat. § 419C.615 (2001); Or. Rev. Stat. § 419C.616 (2001); Or. Rev. Stat. § 419C.617 (2001).
459 Or. Rev. Stat. § 419C.615 (2001) (noting also that a court's decision granting or denying such a request is subject to appeal by either party). *See also* Or. Rev. Stat. § 419C.617 (2001) (providing time limitations for set-aside or modification requests for certain adults); Or. Rev. Stat. § 419C.626 (2019), Or. Rev. Stat. § 419C.653 (2008) (providing for review or modification of order committing a youth to OYA).
460 Or. Rev. Stat. § 419C.200(1)(b) (2018).
461 Or. Rev. Stat. § 419C.203(1) (2012).
462 Or. Rev. Stat. § 419C.203(4) (2012).
463 Or. Rev. Stat. § 419C.203(1) (2012).
464 Or. Rev. Stat. § 419C.380(4) (2018); Or. Rev. Stat. § 419C.570(1)(a)(B) (2003).
465 Or. Rev. Stat. § 419C.473(1) (2019).
466 Or. Rev. Stat. § 419C.475(2) (2020).
467 Or. Rev. Stat. § 418.034(2) (1993). *See also* Or. Rev. Stat. § 419B.400 (2016); Or. Rev. Stat. § 419B.402 (2003); Or. Rev. Stat. § 419B.404 (2003); Or. Rev. Stat. § 419B.406 (2003); Or. Rev. Stat. § 419C.590 (2016); Or. Rev. Stat. § 419C.592 (2003); Or. Rev. Stat. § 419C.595 (2003); Or. Rev. Stat. § 419C.597 (2003).
468 Or. Rev. Stat. § 419C.570(1)(a) (2003).
469 Or. Rev. Stat. § 419C.449 (2003); Or. Rev. Stat. § 419C.446(2) (2012).
470 Or. Rev. Stat. § 419C.590(1) (2016).

Youth who are adjudicated delinquent for committing an act that would be an offense if committed by an adult are subject to the same fines as adults for such offenses.[471] Unlike the adult provisions, the delinquency code requires the court to "consider the potential rehabilitative effect of a fine" in determining the amount of the fine.[472]

Courts must enter an order for restitution for a victim's injury, loss, or damage in a delinquency case,[473] and may order restitution as part of a youth's formal accountability agreement in diverted cases.[474] The court may order restitution that includes the cost of counseling and treatment for emotional and psychological injury in certain serious cases like murder, aggravated murder, or a sex crime for the victim or members of the victim's family who witnessed the act.[475] If a youth alleges that they are unable to pay restitution, the court may delay enforcement of the sanction and may establish or allow the juvenile department or other supervising authority to establish a payment schedule.[476]

Those required to pay restitution may file a motion requesting satisfaction of the judgement if at least 50 percent of the ordered amount is satisfied or at least ten years have passed, and they have substantially complied with their payment plan, have not subsequently been found delinquent, and have satisfactorily completed probation or parole for the act relating to the restitution order.[477]

Post-Disposition Proceedings

Children must receive appointed counsel in certain post-disposition proceedings, including "at a hearing concerning an order of probation,"[478] "in any case in which the youth would be entitled to appointed counsel if the youth were an adult charged with the same offense,"[479] at a hearing regarding the youth's responsibility to report as a sex offender,[480] and on appeal,[481] and may be appointed counsel in any other proceeding under the jurisdiction of the juvenile court.[482]

In addition to hearings listed above, children may appear before the court for de novo review of a referee's order;[483] modification or "set-aside" proceedings, including medication of youth committed to state custody;[484] habeas corpus;[485] and expunction hearings.[486] Oregon provides youth the right to appeal and the right to appointed counsel on appeal.[487]

471 Or. Rev. Stat. § 419C.459 (2012). *See* Or. Rev. Stat. § 137.286 (2016); Or. Rev. Stat. § 153.021 (2017).
472 Or. Rev. Stat. § 419C.459 (2012). *See also* Or. Judicial Dep't, 2020 "Schedule of Fines" on Violations (SOF-20): Presumptive, Minimum, and Maximum Amounts for Violation Offenses in Oregon (2020), https://www.courts.oregon.gov/schedules/ScheduleofFinesViolations20.pdf.
473 Or. Rev. Stat. § 419C.450(1)(a)(A) (2008).
474 Or. Rev. Stat. § 419C.236(2) (1995).
475 Or. Rev. Stat. § 419C.450(1)(d) (2008).
476 Or. Rev. Stat. § 419C.450(3)(a) (2008).
477 Or. Rev. Stat. § 419C.450(5)-(8) (2008).
478 Or. Rev. Stat. § 419C.200(1)(a)(B) (2018).
479 Or. Rev. Stat. § 419C.200(1)(a)(C) (2018).
480 Or. Rev. Stat. § 163A.030(4)(a) (2020).
481 Or. Rev. Stat. § 419A.211(1) (2012).
482 Or. Rev. Stat. § 419C.200(1)(a)(D) (2018).
483 Or. Rev. Stat. § 419A.150(4)-(8) (2003).
484 Or. Rev. Stat. § 419C.610(1)-(2) (2001); Or. Rev. Stat. § 419C.613 (2003); Or. Rev. Stat. § 419C.615 (2001) (noting also that a court's decision granting or denying such a request is subject to appeal by either party); Or. Rev. Stat. § 419C.617 (2001) (providing time limitations for set-aside or modification requests for certain adults); Or. Rev. Stat. § 419C.626 (2019). Or. Rev. Stat. § 419C.653 (2008) (providing for review or modification of order committing a youth to OYA).
485 Or. Rev. Stat. § 419C.013 (1995).
486 Or. Rev. Stat. § 419A.262 (2015); Or. Rev. Stat. § 419A.265 (2017).
487 Or. Rev. Stat. § 419A.211(1) (2012); Or. Rev. Stat. § 419A.200(1) (2014); Or. Rev. Stat. § 419C.285(2)(d) (2015).

Juvenile Sex Offender Registration

Youth adjudicated of felony-level sex crimes[488] after August 12, 2015 may be ordered to report as a sex offender.[489] The court must have a hearing regarding a requirement to report, unless the youth, after consultation with their attorney, waives such hearing.[490] A youth who is subject to a sex offender reporting hearing has the "right to be represented by a suitable attorney possessing skills and experience commensurate with the nature and complexity of the case, to consult with the attorney prior to the hearing and, if financially eligible, to have a suitable attorney appointed at state expense."[491] Youth ordered to report as a sex offender may be granted relief from reporting requirements.[492]

Adult Prosecution of Youth

Under Oregon law, all youth who commit certain offenses are subject to waiver to adult court and other specific sentencing provisions, as follows:

- Youth aged 15, 16, or 17 who meet statutorily delineated offense criteria[493] can be waived to adult court after a hearing finding that "retaining jurisdiction will not serve the best interests of the youth and of society and therefore is not justified."[494]
- When a juvenile court waives a youth to adult court, the court may waive all future cases to adult court if the youth is 16 years of age or older.[495]
- If a youth is convicted of certain offenses after waiver, the court must impose a sentence of incarceration for a term no less than the presumptive term set forth in the code.[496]
- Youth convicted as adults may not receive a sentence of life without parole.[497]
- The code permits youth to be eligible for a "second look" hearing for conditional release.[498] A youth sentenced as an adult may be considered for conditional release if they have a projected release date after their 25th birthday, at which time they would be transferred from youth prison to adult prison, but before their 27th birthday; or if they were sentenced to at least two years, are over 24.5 years old, and have served one-half of their sentence.[499]
- Youth who are convicted as adults for offenses committed on or after January 1, 2020 will be eligible for parole after 15 years, subject to guidelines requiring the parole board to "consider and give substantial weight to the fact that a person under 18 years of age is incapable of the same reasoning and impulse control as an adult and the diminished culpability of minors as compared to that of adults."[500]

488 Or. Rev. Stat. § 163A.005(5) (2015).
489 Or. Rev. Stat. § 163A.030(1)(a) (2020); Or. Rev. Stat. § 163A.025(1) (2020).
490 Or. Rev. Stat. § 163A.030(1)-(10) (2020).
491 Or. Rev. Stat. § 163A.030(4)(a) (2020).
492 Or. Rev. Stat. § 163A.130 (2020); Or. Rev. Stat. § 163A.135 (2020). *See also* Or. Rev. Stat. § 163A.130(12) (2020) (providing the right to appointed counsel for such hearings).
493 Or. Rev. Stat. § 419C.349(1)(a) (2019) (providing that the criteria include youth alleged to have committed an act which if committed by an adult would constitute aggravated murder or other serious offenses in Or. Rev. Stat. § 137.707 (2020), such as certain manslaughter, assault, kidnapping, certain sex offenses, arson, and aggravated vehicular homicide; any Class A or Class B felony; or certain Class C felony-level offenses such as certain escape, assault, coercion, arson, robbery offenses; Class C offenses in which a youth threatened to use a firearm; or any offense the state and youth stipulate can be waived).
494 Or. Rev. Stat. § 419C.349 (2019).
495 Or. Rev. Stat. § 419C.364 (1993).
496 Or. Rev. Stat. § 137.707 (2020).
497 Or. Rev. Stat. § 137.707(2) (2020).
498 Or. Rev. Stat. § 137.707(1) (2020). *See* Or. Rev. Stat. § 420A.203 (2020); Or. Rev. Stat. § 420A.206 (2020).
499 Or. Rev. Stat. § 420A.203(1)(a)-(b) (2020).
500 *See* S.B. 1013, 80th Legis. Assemb., Section 3d (Or. 2019); *see also* S.B. 1008, 79th Legis. Assemb., Reg. Sess. (Or. 2017).

- A youth under 18 who is committed to prison after being convicted as an adult may serve their sentence in a youth prison until they turn 25.[501] A person who committed their offense under 18 but whose proceedings were initiated after their 18th birthday may be held in youth prison until age 25, under the same terms as a young person whose proceedings were initiated before they turned 18.[502]

501 Or. Rev. Stat. § 137.124(5)(a)(A) (2020). *See also* Or. Rev. Stat. § 420.011 (2020).
502 Or. Rev. Stat. § 137.124(5)(a) (2020).

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