



WHO'S HELPING KIDS IN COURT?

A report on how new policies are impacting Utah Children's Right to have a defense attorney when appearing in juvenile delinquency court

EXECUTIVE SUMMARY



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The primary purpose of this policy report is to assess the impact of new laws in Utah meant to improve young people's access to legal assistance when appearing in juvenile delinquency court.

It functions as a follow-up investigation into the issue of juvenile indigent defense as discussed in our [2019 report](#), "And Justice for All Kids: A Child's Right to 'The Guiding Hand of Counsel' and the State of Defense Representation for Children in Utah's Juvenile Courts."

The right of young people to be represented by an attorney in delinquency court proceedings was established in the landmark case *In Gault*, 387 US 1 (1967). In that case, the Supreme Court articulated that multiple due process rights must be afforded to children who are facing charges in a juvenile court.

Despite the clearly established rights of young people, both under *Gault* and in subsequent important legal decisions, many states - including Utah - have struggled for decades to put these promised protections in practice.

As this update report will show, though, policy changes made between 2018 and 2020 appear to have had a very positive impact on the practical fulfillment of Utah children's right to an attorney.

Key Findings

For this new report, our team of court observers attended more than 250 distinct juvenile court proceedings, between October 2020 and January 2021, across all eight judicial districts in Utah. Our main purpose was to answer these two questions:

- 1 *How often do Utah youth still appear in juvenile delinquency court without legal counsel; and*
- 2 *How often do Utah youth waive their right to be represented by an attorney?*

Here are our key findings related to those two primary questions:

Overwhelmingly, young people appearing in juvenile delinquency hearings in Utah did not waive their right to be represented by an attorney.

In more than 99% of observed hearings, it was clear that the young person had not waived their right to an attorney, and had secured legal counsel. We believe that by creating a statutory presumption of indigency, Utah has removed the primary barrier to young people fully realizing their right to legal counsel in delinquency proceedings.

Juvenile delinquency hearings in Utah rarely proceeded without defense counsel present, regardless of where the hearing was held in the state.

Youth appearing in juvenile court almost never did so without a defense attorney present in some capacity. In more than 95% of all observed court hearings, a defense attorney was present.

The vast majority of youth appearing in juvenile delinquency court were represented by a public defender.

This has remained unchanged since our 2019 report. When a defense attorney was clearly present (239 hearings), the young person retained private counsel in fewer than 5% of those hearings. In all other instances, the youth appeared to have accepted representation from a public defender appointed by the court.

While Utah's juvenile court judges rarely needed to explain the right to counsel to youth appearing in their (virtual) courtrooms, they regularly reviewed other key rights.

Utah juvenile court judges appeared to appoint counsel early in the legal process; youth almost always accepted that appointment. In a few cases, a young person appeared in court having already secured private legal counsel. Hence, we almost never observed a juvenile court judge explain to a young person their right to a defense attorney, because one was already in place.

However, judges often checked with youth that they had had enough time to talk with their defense attorney before making a decision. Additionally, we regularly observed juvenile court judges explaining other key rights that children are afforded in delinquency court, including: the right to a trial, the right not to incriminate themselves and the right to question their “accuser” in court.





Defense attorney attendance at hearings does not necessarily translate into quality legal counsel for the young people they represent.

This report does not assess the quality of legal counsel provided for the children who were the subject of hearings we observed. That said, observers' notes occasionally included remarks about defense counsel who appeared disengaged, confused or unprepared.

Even these cursory comments, made by observers without legal training, indicate that while having defense counsel present on their behalf was better than having no attorney present, these children might have been afforded more vigorous legal advocacy.

Recommendations

FOR POLICY MAKERS

Conduct an official assessment of the quality of defense counsel currently afforded to Utah children appearing in juvenile delinquency court.

It is important that a follow-up to this report be conducted when court practices have fully entered a post-pandemic era. Court observations in such an environment will help to answer whether juvenile defense attorneys will attend such a high percentage of hearings without the convenience of an online option.

We strongly recommend that this next phase of research include an assessment of how well children are being defended by counsel (particularly, court-appointed public juvenile defenders).

FOR THE COURTS

Carefully consider how to best incorporate online hearings into the court's functions going forward, regardless of public health emergencies.

While there were challenges with online hearings, there were also benefits. Most importantly, online hearings offered convenience for community and family members who wish to be engaged in juvenile court proceedings.

We recommend that the regular use of online hearings be considered in rural counties, in particular, and in cases when translation is needed. The time saved by avoiding travel for hearings may offer strong incentive for lawyers, family members, victims and the youth themselves to appear.

Use of online hearings should include:

- Simple, clearly stated protocol for participants.
- Assistance for youth and families without access to appropriate technology.
- Ongoing training and technical support for judges, prosecutors and defense attorneys regularly appearing in online hearings.
- Individual WebEx links for individual court proceedings.

Conduct an assessment of how well court translation services are functioning, from the perspective of translators and non-English-speaking court attendees.

We observed sufficient issues to believe that there is room for improvement in this area. However, we recommend that translators and those who rely on them be surveyed first, to determine to what extent attention is warranted.

Provide ongoing professional development for judges seeking to better engage and motivate youth appearing in their courtrooms.

We recommend ongoing professional development for juvenile court judges regarding:

- General youth/adolescent development;
- Interpreting youth behavior and communication;
- Motivational interviewing; and
- Building emotional intelligence;

“One of the first cases I observed was a young kid, maybe 13 or 14 years old. His charges were pretty serious. When they told him he couldn’t go back to home detention, that he had to stay institutionalized, he broke down in sobbing tears. I was reminded that these are kids!”

It’s heartbreaking because they are so young. They don’t know what they are doing sometimes. They are still developing into their own person and that is a hard time in life.”

-Tanya Alvarado, Court Observer

FOR YOUTH & THEIR FAMILIES

Never waive the right to an attorney.

When the judge orders a public defender to represent a young person, they should accept that representation or hire a private attorney. The juvenile justice system has a very specific and complicated “language” of its own. Youth and their families need someone to help translate that language for them, to ensure better long-term outcomes of the youth's court involvement. .

Be available to the appointed defense attorney as much as possible.

From the moment a judge assigns an attorney to represent a youth, that attorney works for the young person. It is important that youth keep in touch with their defense attorney so that they can do a good job working for them.

If a child is not in touch with their defense attorney between court hearings, that child may not get the best legal outcomes possible. Youth and their families should make sure that their defense attorney has a way to reach them, whether by phone, email or at a physical address.

If English is not the first language of a youth, or their parent(s)/guardian(s), they should ask for a court interpreter who can translate for them.

Youth can let their lawyer or the judge know that they or their family need a court interpreter. The court will appoint a court interpreter to translate at every hearing.



It is not the job of a youth appearing in juvenile court to translate for their family members, or vice versa. A court interpreter is a professional who is familiar with legal terms and courtroom protocol. It is best to leave the job of translation to the court interpreter.

Defense attorneys work for their clients. If a young person needs more time to think about what is being proposed, or if they want to meet with their lawyer again to get more information, they should request to do so.

Sometimes, it can feel like taking extra time to meet with an attorney will just make a young person's involvement with the court last longer.

But it is important that youth involved in juvenile court know as well as possible what is happening to them, and to have good information about what might happen if they take certain actions.

Youth and their families should take every hearing seriously - and not be disrespectful to the judge.

How a young person acts or speaks to the judge in a hearing can make a difference in what the judge decides. Of course youth have a right to ask questions, and speak what is on their mind - but there can be consequences.

Being confrontational with a juvenile court judge, even a judge that is usually understanding and patient, could result in poor outcomes for that young person.



Having a juvenile defender represent you is important. They are there to offer support and guidance. Having legal representation will give you the best fighting chance in the system.



Ana Jenny Fernandez, Court Observer

