



# THE PRICE OF JUSTICE

The High Cost of “Free” Counsel for Youth in the Juvenile Justice System

Authored by Jessica Feierman, Nadia Mozaffar, Naomi Goldstein  
and Emily Haney-Caron

2018

Juvenile Law Center  
Fighting for the rights  
and well-being of youth

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### A Publication of Juvenile Law Center

**Authored by:**

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Emily Haney-Caron

**Juvenile** Fighting for the rights  
and well-being of youth  
**Law Center**

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# TABLE OF CONTENTS

- Introduction..... 3
- A. The Importance of Free Counsel in Juvenile Proceedings ..... 5**
- B. Costs Associated with Public Defenders and Appointed Attorneys..... 6**
  - 1. Indigency Determinations and the Appointment of Counsel .....6
  - 2. Administrative Fees and Reimbursement..... 7
    - a. Administrative Fees .....7
    - b. Reimbursement .....9
- C. Impact on Youth and Families .....10**
- D. Moving Forward .....13**
- Conclusion .....14**
- Appendix: Survey Methodology .....15**
- Endnotes ..... 17**

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## INTRODUCTION

More than fifty years ago, the United States Supreme Court established in *Gideon v. Wainwright* that a criminal defendant who cannot afford to hire a lawyer must be provided one at no cost because “lawyers in criminal courts are necessities, not luxuries.”<sup>1</sup> Just a few years later, the Court held in *In re Gault* that young people in juvenile justice proceedings, like adults in criminal cases, have the right to an attorney to ensure that the system treats them fairly.<sup>2</sup> Yet, across the country, this fundamental right to counsel is accompanied by hefty price tags, even for youth who are indigent and eligible for court-appointed attorneys. In almost every state, laws either permit or require young people or their family members to pay for the cost of court-appointed attorneys, including public defenders.<sup>3</sup> In many states, even families living in poverty must bear this burden. These laws and practices undermine young peoples’ procedural rights and erode the restorative vision of the juvenile justice system.

This report analyzes statutes regarding cost of court-appointed counsel in each state, including fees for public defenders.<sup>4</sup> The report is also based on a survey of 153 individuals—including attorneys for youth and other professionals and stakeholders,<sup>5</sup> and includes comments from attorneys who further explain the impact of these policies on youth and their families. The report reveals that laws and policies across the country permit or require youth and families to pay for cost of court-appointed counsel—including public defenders, that courts regularly impose such costs, and that the financial obligations lead to troubling consequences for youth and families.

Youth almost never have resources to pay for their own attorneys;<sup>6</sup> asking them to do so puts them in an impossible position. Because state laws typically require youth or their families to prove indigence, however, this report focuses on what happens after the determination of indigence and the appointment of counsel. In almost every state, youth or their families must pay for legal assistance even if they are determined to be indigent, either by reimbursing the cost, paying a flat fee, or paying an application or other administrative fee.

Charging families—especially those living in poverty—for “free” attorneys leads to devastating consequences. Research has shown that fines and fees in the juvenile justice system create serious financial burdens that push youth further into the justice system and drive families who are already facing financial difficulties into greater economic distress.<sup>7</sup>

Our research for this report suggests that requiring youth and families to pay for the cost of court-appointed counsel leads to similar problems—youth are forced deeper into the justice system, youth remain under justice system supervision longer, and families are pushed into poverty. As Alabama attorney Gar Blume explained,

Despite scholarly research that shows that children perform best after relatively short probationary periods, Alabama youth can’t get off of probation until all of their financial obligations are paid in full. As a result, their time “in the system” is often extended indefinitely, while the child and a parent have to attend a monthly “pay or stay” docket to either bring their receipt for payment or face the threat of contempt proceedings. My experience is that a kid who sees no end to her/his court involvement is much more likely to conclude that how he/she behaves makes no difference.<sup>8</sup>

Moreover, while the justice system should be a level playing field, these fines and fees also exacerbate disparities based on race and class. Research has shown that youth of color are pushed deeper into the juvenile justice system than their white counterparts, even for the same types of behavior.<sup>9</sup> This, in turn, has placed a disproportionate financial burden on youth and families of color.<sup>10</sup> Imposing legal costs likely magnifies this burden.

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— GAR BLUME,  
ATTORNEY

In addition, requiring youth or families to pay for court-appointed counsel may undermine the juvenile court process. A significant number of survey respondents noted that young people waived the right to be represented by counsel because of the fees they or their family members would be required to pay for their attorneys. At least one survey respondent also highlighted that prosecutors used the threat of fees to pressure youth to plead to delinquency charges.

Section A of the report discusses the importance of counsel for youth in the juvenile justice system. Section B explores state laws and policies relating to the cost of court-appointed counsel for youth and families. Section C shares the result of our survey of public defenders and examines the harms associated with the cost of court-appointed counsel, including the financial burdens on young people and their families and the conflicts created when parents are responsible for their children's appointed counsel fees, and Section D highlights a recent legislative reform in California that may serve as a model around the country.

## A. THE IMPORTANCE OF FREE COUNSEL IN JUVENILE PROCEEDINGS

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In its landmark ruling, *In re Gault*, the United States Supreme Court recognized that “[t]he 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.”<sup>11</sup> The Court has also noted that, “[t]he right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice.”<sup>12</sup>

The Supreme Court’s conclusions are common sense. Most adolescents, particularly older adolescents, have the cognitive capacity to advise counsel and thus participate effectively in their own defense.<sup>13</sup> What they typically lack is the capacity to withstand the pressure to waive counsel—or to withstand the inherently coercive environment of the courtroom without legal representation.<sup>14</sup> They also lack the education and experience to understand and navigate court proceedings without counsel.<sup>15</sup> The Supreme Court in *Gault* long ago recognized that youth are at an extreme disadvantage if they appear in court without counsel:

The most informal and well-intentioned of judicial proceedings are technical; few adults without legal training can influence or even understand them; certainly children cannot. Papers are drawn and charges expressed in legal language. Events follow one another in a manner that appears arbitrary and confusing to the uninitiated. Decisions, unexplained, appear too official to challenge.<sup>16</sup>

Research further confirms that youth may “function less capably as criminal defendants than do their adult counterparts.”<sup>17</sup> Counsel for youth serve an important purpose, assisting youth in navigating complex procedures with momentous and potentially dire consequences.<sup>18</sup>

Children simply do not have the resources to pay for their own attorneys. Moreover, making youth access to counsel contingent on family financial status raises serious concerns:

(1) The investigation into parents’ incomes can be lengthy—not to mention invasive—and, in some cases, is ongoing while children are held behind bars without access to an attorney; (2) the investigation can stir fear in families that they may be forced to hire an attorney they cannot afford, which can influence a child’s decision to waive counsel as a means of forgoing the investigation altogether; (3) some parents have incomes that fall just above the eligibility threshold, but they are not truly capable of paying for counsel, leaving the child without representation; (4) some parents who are ineligible may decide not to hire an attorney, even if they can afford one, forcing the child to navigate the system alone; and (5) if parents incur the cost of representation, there is potential for conflict between the juvenile defender’s loyalty to the child and perception of loyalty to the parents—either from the attorney or family.<sup>19</sup>

Over a half century ago, the United States Supreme Court established a constitutional right to counsel for children delinquency proceedings. Requiring payment from youth, who almost always lack the financial means to pay, or from their families undermines the right and erodes the integrity of the juvenile court process.

*The most informal and well-intentioned of judicial proceedings are technical; few adults without legal training can influence or even understand them; certainly children cannot.*

— *IN RE GAULT*

## B. COSTS ASSOCIATED WITH PUBLIC DEFENDERS AND APPOINTED ATTORNEYS

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In almost every state, parents and children incur costs associated with court-appointed counsel. State statutes typically assess these costs by imposing administrative costs such as application fees, processing fees, or public defender fees, and by requiring reimbursement for the cost of counsel. These costs are often imposed even for youth determined to be indigent for purposes of appointment of counsel.

Our survey of attorneys and other professionals working with justice-involved youth confirms that costs for court-appointed attorneys—including administrative fees and reimbursement requirements—are imposed on youth and families across the country. Respondents in 19 states confirmed that these counsel costs are imposed in their jurisdictions.<sup>20</sup> A study by the National Juvenile Defender Center based on telephone interviews with public defenders identifies an additional 19 states in which the costs are imposed.<sup>21</sup>

Because practices vary so significantly from county to county, our survey likely under-reports many states in which fees are imposed. As attorney Amanda Powell explained:

Judges have wide discretion to impose or waive the application fee and, as you might imagine, there is incredible discrepancy in how this plays out. Some judges refused to ever impose the application fee from the moment it was instituted; others rarely if ever waive it. Same with recoupment. The Ohio Administrative Code states counties “shall” establish recoupment programs, but plenty of counties don’t have one. There’s wide variance in counties that do, from those that do a decent job of only assessing a reasonable amount on people who really are at the top of the indigence scale, to those that always assess the same amount on everyone (sometimes even those under 125%), to those that assess full costs.<sup>22</sup>

These wide disparities in application make tracking the practices challenging. Nonetheless, existing data confirm that the fees are widely imposed.

### 1. Indigency Determinations and the Appointment of Counsel

While this report focuses on costs imposed on youth after they have been deemed eligible for appointed counsel, these costs must be understood in the context of the appointment of counsel and the determination of indigence. In a handful of states, young people are presumed indigent regardless of their parents’ income or independent financial eligibility.<sup>23</sup> While generally such a presumption results in an automatic appointment without further consideration of a child or the family’s financial resources,<sup>24</sup> this is not always the case. In Pennsylvania, for example, the presumption can be rebutted if the court determines that children have financial resources to retain their own counsel.<sup>25</sup>

Most states determine eligibility for appointment of counsel by assessing the financial resources of youth and their families. A national report found that eligibility determinations may be conducted by court personnel, public agencies, or public defender offices and are usually based on comparing salaries to the federal poverty guidelines.<sup>26</sup> On average, young people only receive appointed counsel if their families’ salaries are less than 125% of the poverty guidelines.<sup>27</sup> This is an incredibly stringent requirement. For an individual, this would be an income of approximately \$15,000 per year; for a family of three, approximately \$26,000.<sup>28</sup>

States may also appoint attorneys for youth based on other considerations, such as a conflict of interests between the parent and child,<sup>29</sup> a parent’s refusal to retain counsel for the child,<sup>30</sup> or a court determination that appointment of counsel is necessary for the administration of justice.<sup>31</sup>



In some jurisdictions, application fees may be waived, reduced, paid later in a case, or paid off through work or community service. Colorado’s statute, for example, allows the court to waive the \$25 processing fee, if the court determines the juvenile or his or her parents do not have the financial resources to pay the fee.<sup>37</sup> In Tennessee, although the court may waive the \$50 court-appointed counsel administrative fee, it may also increase the fee to \$200 upon finding that the child or their parents or guardian can pay the increased amount.<sup>38</sup> In Ohio, the law shifts payment until final disposition if an individual fails to pay the non-refundable application fee within seven days of appointment of counsel.<sup>39</sup>

While these statutes may be less onerous than set fees, they still impose financial burdens and may have a chilling effect on representation. Youth may waive counsel out of fear of the financial obligation, families may not know how to request waiver of fees, or courts may fail to offer the waiver. Moreover, even reduced fees may be highly problematic when compounded by the multitude of financial charges young people face as they navigate the justice system.<sup>40</sup> Indeed, even a Delaware law that allows people to work to discharge the Office of Defense Services administrative fine if they are unable to pay<sup>41</sup> is not helpful to youth. Because youth must attend school full-time, have limited transportation resources, and may not have access to age-appropriate work projects, work obligations may undermine the purposes of the juvenile justice system.

<b>STATUTES PERMITTING OR REQUIRING ADMINISTRATIVE FEES FOR APPOINTED COUNSEL</b>	
<b>STATE</b>	<b>AMOUNT</b>
Arizona	\$25 Administrative Assessment Fee
Arkansas	\$10-\$400 Public Defender User Fee
Colorado	\$25 Processing Fee
Delaware*	\$100 Administrative Fee
Florida*	\$50 Application Fee
Georgia*	\$50 Application Fee
Louisiana	\$40 Application Fee
New Mexico	\$10 Application Fee
Ohio	\$25 Application Fee
Tennessee	\$50-\$200 Administrative Fee

\* Mandatory fee

## b. Reimbursement

Courts also require youth and their families to reimburse part or all of the cost of appointed counsel. Reimbursements are generally imposed on parents,<sup>42</sup> although some states require reimbursement from the child as well.<sup>43</sup> Rates vary but can, in some cases, be extremely burdensome. Reimbursement may be required,<sup>44</sup> for example, at rates of up to \$650 per hour.<sup>45</sup>

Most problematically, some statutes require reimbursement for counsel costs even when families lack the resources to pay. In Nevada, for example, even if the court determines that the parent is indigent, the court may still require the parent reimburse the county or state for the cost of appointed counsel in accordance with their ability to pay.<sup>46</sup> Idaho code specifies that parents do not have to make reimbursement payments for cost of court-appointed counsel if they are indigent, but the “current inability” of parents or juveniles to pay the reimbursement does not “restrict the court from ordering reimbursement.”<sup>47</sup> The provision gives judges significant discretion to determine whether parents will have future ability to pay and subjects even currently indigent people to costs. For poor families already struggling financially, these provisions may create significant added burdens.

Even states that excuse reimbursement in cases of indigence may create serious financial burdens on families who have low incomes but do not qualify as indigent. In many states, parents who are determined capable of paying are obligated to provide attorneys for their children. If they fail to provide one, the state will appoint an attorney and charge the parent the cost of reimbursement.<sup>48</sup> For families just above the cut off for indigence, in particular, the obligation to pay for these costs will be problematic, as further explained below.

STATUTES PERMITTING OR REQUIRING REIMBURSEMENT FOR APPOINTED COUNSEL	
WHEN REIMBURSEMENT REQUIRED	STATES
Anytime attorney appointed	Alabama, Alaska, Arizona, Arkansas, Connecticut, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oregon, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming
Parent did not retain counsel for child	Colorado, Florida, Oklahoma, South Carolina
Child did not prevail in court	North Carolina, South Dakota, West Virginia

*Our current system and the mindset that everyone can pay despite their circumstances is counterproductive; it further clogs the court docket and harms families.*  
 – ROB MASON

## C. IMPACT ON YOUTH AND FAMILIES

Imposing the costs of justice on youth and their families can have dire consequences. As Rob Mason, public defender and director of a Florida juvenile division, explained, “Besides adding financial and mental stress to the family, these fees and costs often keep a child under supervision until they’re paid . . . even if all other court sanctions have been satisfied. The longer the probation or conditional release, the more likely there will be a violation and further court proceedings . . . with more costs. Our current system and the mindset that everyone can pay despite their circumstances is counterproductive; it further clogs the court docket and harms families.”<sup>49</sup>

State statutes also impose myriad penalties on young people and their families who fail to pay counsel fees.<sup>50</sup> In many states, parents may face civil actions to collect unpaid attorney’s fees,<sup>51</sup> while many other states automatically enforce orders for uncollected costs as civil judgments.<sup>52</sup> Civil judgments have far-reaching and long-term financial consequences for youth and their families. For example, in Wyoming, civil judgments may result in income withholding, seizure of unemployment or worker’s compensation, imposition of property liens, and barring drivers’ license issuance or renewal.<sup>53</sup>

Additionally, many state statutes, without requiring a civil judgment, explicitly establish that failure to pay for court-appointed counsel may result in penalties such as: liens on property,<sup>54</sup> wage garnishment,<sup>55</sup> or suspending or barring driver’s licenses.<sup>56</sup> Such penalties compound the financial difficulties families already face. Families who struggle to make payments to the court because of unemployment or underemployment may face even greater obstacles to employment without a driver’s license. Negative credit scores may hinder a youth’s attempts to seek further education or professional training or may undermine the family’s housing stability by making it difficult for family members to rent or buy homes.

### STATUTES IMPOSING CONSEQUENCES FOR NONPAYMENT OF APPOINTED ATTORNEY COSTS

POSSIBLE CONSEQUENCES	STATES
Civil action	Connecticut, Idaho, Kansas, Kentucky, New Hampshire,
Civil judgment	Alabama, Arizona, Indiana, Iowa, Mississippi, New Jersey, North Carolina, Oregon, Tennessee, Washington, Wisconsin, Wyoming
Claim against assets and estate	South Carolina
Contempt of court	Alabama, Florida*, Iowa, Michigan, Nebraska, North Carolina, Oklahoma*, Texas,
Garnishment (income or tax refund)	Minnesota
Property lien	Florida, Iowa, New Jersey, South Dakota,
Sent to private collections agency	Wisconsin

\* Parents in Florida and Oklahoma face contempt of court if they refuse to appoint counsel for their children.

Our survey confirms these consequences. More than half (51.9%) of respondents described added financial hardships or related problems resulting from these counsel costs. Of respondents who reported negative impacts, 42.3% reported that inability to pay resulted in a civil judgment against the youth that carried into adulthood. As attorney Gar Blume explained, “although juvenile court jurisdiction ends absolutely at age 21 for all other purposes, collection of financial obligations matters can go on forever.”<sup>57</sup> 19.2% reported no adverse consequences, and 28.8% were unsure. Our data on this issue is limited as numerous consequences occur after representation has ended or are outside the scope of the defender’s communications with youth. This likely explains the high number of respondents who reported being “unsure” about consequences.

Respondents also confirmed the financial strain these costs impose on youth and families. Of those reporting additional burdens, 57.7% stated that costs and fees caused families to go into debt. An additional 23.1% of these respondents reported that the cost of court-appointed counsel led to “other” negative consequences, including “loss of housing, lack of money to pay transportation costs, loss of utilities or other basics of life due to inability to pay,” preventing “participation in other programs such as job corps [and] entry into military,” and “severed relationships between family members.”

While any imposition of costs and fees on indigent youth and their families can impair procedural justice and create additional hardships, the costs of court-appointed counsel create unique threats to the constitutionality and adequacy of juvenile court proceedings. More than a third (34.6%) of respondents reporting a negative impacted from attorney fees noted that these costs were leading youth to waive counsel, presumably to avoid the financial obligation altogether.<sup>58</sup>

Attorney costs may also contribute to pressure on youth to plead to delinquency charges. In Florida, a survey respondent noted that families paid a standard public defender lien of \$100 in misdemeanor cases and \$250 in felony cases as well as deposition costs and other investigation costs. The respondent also noted that the state will sometimes present the threat of additional prosecution costs—including airfare for witnesses—and “the State often uses the additional fee request to get a child to plea[d] rather than go to trial.”

Counsel costs also risk extending a young person’s involvement with the juvenile justice system. More than half (57.5%) of respondents identifying negative consequences reported that cases remained open longer because youth or families were unable to pay, while an even larger percentage (69.2%) reported that inability to pay resulted in additional court proceedings leading to school absences or missed work. In jurisdictions where each court visit triggers still more costs, youth and their families can be trapped in a revolving door of heightened family debt and recurring involvement with the juvenile justice system. Youth may be forced to remain under court supervision even after they have completed all other obligations, such as meeting the terms of their probation or completing their time in placement. As one youth, Dequan Jackson, previously reported, “You feel like you’re drowning and you’re trying to get some air, but people are just pouring more water into the pool.”<sup>59</sup>

As nearly 20% of these respondents also reported, inability to pay costs may also result in juvenile justice placement. Of respondents who identified negative problems resulting from attorney costs, 19.2% reported that inability to pay resulted in youth being put in placement, and 26.9% reported it resulted in youth staying in placement longer. Research shows that juvenile placement can be harmful for many youth<sup>60</sup> and, more specifically, that longer lengths of stay do not benefit youth or public safety.<sup>61</sup>

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the pool.*

– DEQUAN JACKSON,  
YOUTH ASSESSED  
COUNSEL FEES

Research also shows that expungement of juvenile records is key to assisting youth in a successful transition back to school or a career,<sup>62</sup> yet 34.6% of survey respondents who noted that inability to pay led to problems reported that it prevented a youth from having his or her juvenile record expunged.

Our survey data reveal troubling patterns: the obligation to pay for court appointed attorneys and defenders pushes families into debt, forces youth deeper into the justice system, and jeopardizes the constitutionality of juvenile court proceedings.

## D. MOVING FORWARD

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The policies that best ensure constitutional juvenile proceedings and an effective justice system require the elimination of costs and fees for court appointed counsel or public defenders.

Recent changes to California law provide a model for the rest of the country. In 2017, California passed S.B. 190, legislation eliminating all public defender fees, as well as several other administrative fees previously charged to parents and guardians for their children’s detention, probation supervision, electronic monitoring, and drug testing.<sup>63</sup> The act explicitly makes clear that parents must receive notice that they “shall not be liable for the cost of counsel or legal assistance furnished by the court for purposes of representing the minor.”<sup>64</sup> Prior to the legislative change, at least 51 of California’s 58 counties charged one or more of the fees.<sup>65</sup>

According to Jeffrey Selbin, a clinical professor of law and director of Berkeley Law School’s Policy Advocacy Clinic, eliminating these fees in California improved outcomes for youth and families and eliminated an unfair burden on families of color—without imposing a substantial fiscal burden on the counties or states.

Most people were shocked to find that counties charged indigent families for their child’s public defender. Together with other administrative charges, we also found that public defender fees undermined youth rehabilitation and public safety, and fell most heavily on families of color. Ironically, the fees didn’t fund the public defender system and generated little if any revenue for counties after accounting for the costs of assessment and collection. Ending this high pain no gain practice is helping youth and families who are already facing enough challenges.<sup>66</sup>

California’s example proves that the elimination of fees can be accomplished without adverse fiscal consequences to the effective administration of the justice system. These reforms are fiscally viable, and they set the stage for a more just and effective juvenile justice system.

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– JEFFREY SELBIN,  
CLINICAL PROFESSOR  
OF LAW

## CONCLUSION

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The juvenile justice system is premised on the notion that young people deserve the chance to move forward, to mature, and to meet their potential. For more than fifty years, our legal system has recognized that this can only be accomplished if youth have counsel in juvenile justice proceedings. Yet today instead of a second chance, many youth and their families are saddled with debt. These policies set youth up to fail: young people don't have money to pay for counsel, and imposing the costs on family members risks creating legal conflicts, financial stress, and emotional tensions. Charging for "free" counsel thus results in dire consequences: youth pushed deeper into the system, families struggling economically, racial disparities heightened, and youth forgoing the right to counsel to protect their families from the economic burden.

The time is right for change. States around the country should ensure that, for youth in the juvenile justice system, "free" counsel is actually free of any costs, fees, or requirements of reimbursement. This approach will provide youth with the rights promised in *Gault* and *Gideon*, and contribute to a more equitable juvenile justice system.

## APPENDIX: SURVEY METHODOLOGY

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To complement the statutory research conducted by Juvenile Law Center, researchers in the Psychology Department at Drexel University (Naomi Goldstein, PhD and Emily Haney-Caron, MS, JD) conducted a survey of professionals working with justice-involved youth and non-professionals (including individuals formerly involved with the juvenile justice system and family members or friends of justice-involved youth).

### Participants

Survey respondents were 153 individuals, comprised of 79 attorneys, 40 other professionals working with justice-involved youth, five individuals with former juvenile justice system involvement, ten family members of justice-involved youth, and 19 participants who did not identify with one of the above categories (including five advocates, three law students, three educators, two social workers, two judges, one retired attorney, and two individuals identifying with more than one role). Respondents are presented in two samples: the first, comprised of attorneys and other professionals, totaled 119 participants, and the second, comprised of all other respondents, totaled 34 individuals. An additional eight participants discontinued immediately after indicating they agreed to participate. Among attorneys and other professionals, 28 participants (16 attorneys, 12 other professionals) discontinued immediately after selecting their role or state, and one other professional who reported living outside of the United States was removed prior to analyses. In the second sample, four participants (all identifying as “other”) discontinued immediately after identifying their role or state. All other respondents completed at least some of the substantive questions.

The sample of attorneys and other professionals ranged in age from 28-73 (mean = 49.67, standard deviation = 12.44). In this sample, 51.3% identified as female and 23.5% as male, with 25.2% of participants either choosing not to answer the question or discontinuing before the demographics questions. Participants identified as White (63.9% of respondents), Black or African American (5.0% of respondents), Asian (1.7% of respondents), and American Indian or Alaskan Native (.8% of respondents), with 28.57% of participants choosing not to answer or discontinuing before this question; 1.7% identified as Hispanic or Latino, 66.4% as not Hispanic or Latino, and the remainder chose not to answer. Participants reported working in 31 states and the District of Columbia<sup>67</sup> and at least 78 distinct counties.

The second sample, comprised of formerly juvenile justice-involved individuals, friends or family of justice-involved youth, and anyone who did not identify with one of the other categories, ranged in age from 22-74 (mean = 47.93, standard deviation = 15.60) and identified as 61.8% female, 26.5% male, 2.9% other, and 8.8% did not report gender. Participants identified as White (70.6% of respondents) and African American (17.6% of respondents), with the remainder choosing not to answer; 2.9% identified as Hispanic or Latino, 85.3% as not Hispanic or Latino, and the remainder chose not to answer. Participants reported living in 16 states and the District of Columbia<sup>68</sup> and at least 29 distinct counties.

### Procedures

Participants were recruited via professional and family advocacy listservs, social media, and word of mouth. Participants were provided with information about the survey and were asked to either agree or decline to participate. Participants were asked to complete an online, anonymous survey approximately 10 minutes in length. Data were collected using Qualtrics.

Two slightly different survey versions were used: the first, for attorneys and other professionals, asked additional questions inappropriate for lay respondents (e.g., citations for relevant statutes); the second, for all other respondents, provided more explanation as needed regarding the meaning of legal terms included in questions. Attorneys and other professionals were asked to provide information about the juvenile justice system in the jurisdiction in which they work. All other respondents were asked to provide information about the juvenile justice system in the county in which they live. All participants were asked questions about the frequency of costs for bail, court-appointed attorneys, and school-based citations, as well as criminal court costs for youth charged as adults, and the impact those costs have on youth and families. Additionally, attorneys and other professionals were asked questions about the frequency of costs related to municipal violations and summary offenses or other state law non-traffic tickets or citations, as well as questions about the presumption of indigence, joint and several liability, and challenging costs and fees in court. Finally, participants were asked demographic questions.

### **Method of Analysis**

Because of the exploratory nature of this survey, only descriptive data are presented. The purpose of the survey was to collect preliminary information about the frequency and impact of various types of costs on juvenile justice-involved youth and their families to supplement the statutory analysis. Given the limited sample size and the approach to participant recruitment, as well as the varying policies and impacts across counties, the descriptive data cannot provide a complete picture of any jurisdiction, but rather provide initial information regarding the perspectives of individuals working in and experiencing the juvenile justice systems about the costs imposed by those systems on youth and families.

## ENDNOTES

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- 1 *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).
- 2 *In re Gault*, 387 U.S. 1 (1967).
- 3 Throughout, we use the term “court-appointed attorney” to refer to any attorney provided by the state, including public defenders.
- 4 State regulations, court rules, and public defender policies may also impose additional costs related to court-appointed counsel. Moreover, in many states, the practice varies widely by county, by district, or even by courthouse. As Gar Blume, an attorney in Alabama explained, “Although we have one statute and one set of procedural rules, in reality, what we have are 68 unique fiefdoms...each with their own ways of doing things.” Email from Gar Blume, Attorney, Blume & Blume Law to Jessica Feierman, 6/2/18.
- 5 Survey respondents were 153 individuals, comprised of 79 attorneys, 40 other professionals working with justice-involved youth, 5 individuals with former juvenile justice system involvement, 10 family members of justice-involved youth, and 19 participants who did not identify with one of the above categories (including 5 advocates, 3 law students, 3 educators, 2 social workers, 2 judges, 1 retired attorney, and 2 individuals identifying with more than one role).
- 6 Yet, as described in the report, only a few states presume indigence for youth—the rest require young people to prove that they and their family members cannot afford counsel.
- 7 JESSICA FEIERMAN, ET AL., JUVENILE LAW CENTER, DEBTORS’ PRISON FOR KIDS?: THE HIGH COST OF FINES & FEES IN THE JUVENILE JUSTICE SYSTEM (2016); Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE & JUV. JUST. 1 (2016).
- 8 Email from Gar Blume, *supra* note 4.
- 9 JOSHUA ROVNER, THE SENTENCING PROJECT, POLICY BRIEF: DISPROPORTIONATE MINORITY CONTACT IN THE JUVENILE JUSTICE SYSTEM (2014) (noting similar offending rates for youth of color and white youth for most types of offenses).
- 10 BERKELEY LAW UNIVERSITY OF CALIFORNIA, POLICY ADVOCACY CLINIC, HIGH PAIN, NO GAIN: HOW JUVENILE ADMINISTRATIVE FEES HARM LOW-INCOME FAMILIES IN ALAMEDA COUNTY, CALIFORNIA 8 (2016). *See also* Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE & JUV. JUST. 1 (2016) (discussing how fines and fees can exacerbate racial disparities by increasing recidivism rates for youth with unpaid costs).
- 11 *In re Gault*, 387 U.S. at 36 (citing *Powell v. Alabama*, 287 U.S. 45, 69 (1932)).
- 12 *Kent v. United States*, 383 U.S. 541, 561 (1966).
- 13 Thomas Grisso, et. al., *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants*, 27 L. & HUM. BEHAV. 333, 356 (2003) (finding that 16- and 17-year-olds typically have adjudicative competency relatively on par with that of young adults. While younger adolescents are more likely to have impairments related to adjudicative competency than those ages 16 and up, the majority of 11- to 15-year-olds would be competent to stand trial (1/3 of 11- to 13-year-olds and 1/5 of 14- to 15-year-olds are as impaired in adjudicative competence as seriously mentally ill adults who would not be found competent to stand trial)).
- 14 A significant body of research has since emphasized the unique vulnerability of youth to pressure in legal contexts such as plea negotiations and interrogations. *See, e.g.*, Lindsay Malloy et al., *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders*, 38 L. & HUM. BEHAV. 2, 181 (2014); Saul M. Kassir, *False Confessions*, WIREs COGNITIVE SCI. 1 (2017); Grisso, et al., *supra* note 13; Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 L. & HUM. BEHAV. 141, 147, 150-51 (2003); Naomi Goldstein et al., *Juvenile Offenders’ Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 ASSESSMENT 359 (2003). It stands to reason that adolescents would be similarly subject to coercion in court proceedings. The young person is surrounded by adults in positions of authority. The language and procedures of the courtroom will typically be unfamiliar. And the stakes are extraordinarily high: the proceedings will determine where the youth will be living—whether the youth will be separated from family, friends and home; whether the youth will be in a detention center, a group home, or another custodial setting; and what kind of treatment the youth will receive. Attorneys for youth serve as a needed counterbalance to the pressures of the courtroom.

15 Experience bears this out. One researcher analyzed 99 reported cases in which youth—as young as nine years old—have waived counsel. In 68 of those cases, the youth admitted guilt or entered a plea of no contest, most frequently to serious felony charges. Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts*, 54 FLA. L. REV. 577, 609 (2002). The vast majority of those youth were then committed to state custody, most often to a secure correctional setting. *Id.* at 610. Similarly, youth pressured to appear without counsel in Luzerne County, Pennsylvania were virtually all adjudicated delinquent, many for “acts so minor and trivial” that in most jurisdictions they would never have been filed in juvenile court at all. JUVENILE LAW CENTER, LESSONS FROM LUZERNE COUNTY: PROMOTING FAIRNESS, TRANSPARENCY & ACCOUNTABILITY, RECOMMENDATIONS TO THE INTERBRANCH COMMISSION ON JUVENILE JUSTICE i (2010).

16 *In re Gault*, 387 U.S. at 38 n.65.

17 ELIZABETH S. SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 165 (2008).

18 Ensuring that youth have counsel also supports the “rehabilitative goals” of the juvenile justice system and the commitment to “fairness,” “concern,” and “sympathy” that define the juvenile justice system itself. Indeed, the Supreme Court has long said that being treated fairly, or “procedural justice,” is vital to youth, and therefore that “counsel can play an important role in the process of rehabilitation.” *In re Gault*, 386 U.S. at 38 n.64.

19 NAT’L JUVENILE DEFENDER CTR., *ACCESS DENIED: A NATIONAL SNAPSHOT OF STATES’ FAILURE TO PROTECT CHILDREN’S RIGHT TO COUNSEL* 11 (2017).

20 One of these states, California, has since repealed the law imposing this cost. S.B. 190, 2017-18 Reg. Sess. (Ca. 2017) (signed into law on October 11, 2017).

21 NAT’L JUVENILE DEFENDER CTR., *supra* note 19, at 22-23.

22 Email from Amanda Powell, Consultant for National Juvenile Defender Center, to Jessica Feierman, 6/6/18. *See also* email from Gar Blume, *supra* note 4 (discussing 68 “fiefdoms” in Alabama with varying practices).

23 *See, e.g.*, DEL. CODE ANN. tit. 29, § 4602(c) (West 2016); LA. CHILD CODE ANN. art. 320 (West 2010); N.C. GEN. STAT. ANN. § 7B-2000 (West 2001); 42 PA. CONS. STAT. ANN. § 6337.1(b)(1) (West 2012).

24 *See, e.g.*, DEL. CODE ANN. tit. 29, § 4602(c) (West 2016); N.C. GEN. STAT. ANN. § 7B-2000 (West 2001); LA. CHILD CODE ANN. art. 320 (West 2010).

25 42 PA. CONS. STAT. ANN. § 6337.1(b)(1) (West 2012).

26 NAT’L JUVENILE DEFENDER CTR., *supra* note 19, at 11.

27 *Id.* at 11-12.

28 *Id.* at 12.

29 *See, e.g.*, IDAHO CODE ANN. § 20-514(4) (West 2013); IOWA CODE ANN. § 232.11(4) (West 2016); W. VA. CODE ANN. § 29-21-16 (c) (West 2018).

30 *See, e.g.*, COLO. REV. STAT. ANN. § 19-2-706(2)(b)(I) (West 2014); MCR 3.915(A)(2)(d).

31 *See, e.g.*, MO R Juv P Rule 115.02(a) (“the court shall appoint counsel for the juvenile when necessary to assure a full and fair hearing”).

32 Email from Rob Mason, Director of the Juvenile Division of the Office of the Public Defender, Fourth Judicial Circuit, Florida, to Jessica Feierman, 6/1/18.

33 *See* N.M. STAT. ANN. § 31-15-12(C) (West 1993).

34 *See, e.g.*, ARK. CODE ANN. § 16-87-213(b)(1) (West 2013) (explaining that courts can assess a fee of up to \$400); TENN. CODE ANN. § 37-1-126(c)(2) (West 2012) (allowing courts to assess a \$200 administrative fee).

35 DEL. CODE ANN. tit. 29, § 4602(c) (West 2016).

36 DEL. CODE ANN. tit. 29, § 4607(a) (West 2015).

37 COLO REV. STAT. ANN. § 21-1-103(3) (West 2014).

38 TENN. CODE ANN. § 37-1-126(c)(1)-(2) (West 2012).

- 39 OHIO REV. CODE ANN. § 120.36(A)(1) (West 2017).
- 40 See FEIERMAN, ET AL., *supra* note 7.
- 41 DEL. CODE ANN. tit. 29, § 4607(d) (West 2015).
- 42 See, e.g., IDAHO CODE ANN. § 20-514 (West) (“[t]he parents, spouse, or other person liable for the support of the juvenile or the estates of such persons, and the estate of such juvenile, may be required by the court to reimburse the county for all or a portion of the costs of those legal services rendered to the juvenile by counsel appointed”); IOWA CODE ANN. § 232.11 (West 2016) (“If the court determines . . . that the parent . . . has the ability to pay in whole or in part for the attorney appointed for the child, the court may order that parent to pay such sums as the court finds appropriate . . .”).
- 43 See, e.g., ARK. CODE ANN. § 9-27-316(b)(2) (West 2017) (“the court may order financially able juveniles, parents, guardians, or custodians to pay all or part of reasonable attorney’s fees”); N.H. REV. STAT. ANN. § 604-A:9(l-a) (2018) (“any juvenile charged with being delinquent who has had counsel, or a public defender assigned to him at the expense of the state, or any person liable for the support of the juvenile . . . shall be ordered by the court to repay the state”); OR. REV. STAT. ANN. § 419C.203 (West 2012) (“In determining whether to order the youth to pay costs . . . the court shall also consider the reformatory effect of having the youth pay.”).
- 44 VA. CODE ANN. § 16.1-267(A) (West 2017).
- 45 VA. CODE ANN. § 19.2-163(1) (West 2009).
- 46 NEV. REV. STAT. § 62D.030(5)(B) (2017).
- 47 IDAHO CODE ANN. § 20-514(7) (West 2013).
- 48 See, e.g., COLO. REV. STAT. ANN. § 21-1-103(b) (West 2014); OKLA. STAT. ANN. tit. 10A, § 2-2-301(C) (West 2013); S.C. CODE ANN. § 63-19-1040 (2008).
- 49 Email from Rob Mason, *supra* note 32.
- 50 This report focuses on the penalties listed in state juvenile justice and public defender codes. State regulations and court rules may enumerate additional penalties.
- 51 See, e.g., KAN. STAT. ANN. § 38-2324 (West 2006); N.H. REV. STAT. ANN. § 604-A:9 (2018).
- 52 See, e.g., ARIZ. REV. STAT. ANN. § 8-221(G) (2010); IND. CODE ANN. § 33-40-3-8 (West 2004); MISS. CODE ANN. § 43-21-619 (West 1993); WASH. REV. CODE ANN. § 13.40.192(1) (West 2015).
- 53 See WYO. STAT. ANN. § 14-6-236(b) (West 2004); WYO. STAT. ANN. § 20-6-106(x)-(xi) (West 2012); WYO. STAT. ANN. § 20-6-111(a) (West 2015); WYO. STAT. ANN. § 20-6-112(a) (West 2000).
- 54 See, e.g., FLA. STAT. ANN. § 938.29(2)(a)(2) (West 2010); N.J. STAT. ANN. § 2A:158A-17(a) (West 2013); S.D. CODIFIED LAWS § 26-7A-32 (2002).
- 55 See, e.g., MINN. STAT. ANN. § 260B.331(b) (West 2013).
- 56 See, e.g., TENN. CODE ANN. § 40-24-105(b)(1) (West 2018).
- 57 Email from Gar Blume, *supra* note 4.
- 58 Our survey report number is likely low, since public defenders may simply be unaware that a waiver has occurred because they will never be involved in that child’s case.
- 59 Erik Eckholm, *Court Costs Entrap Nonwhite, Poor Juvenile Offenders*, N.Y. TIMES (Aug. 31, 2016), <https://www.nytimes.com/2016/09/01/us/court-costs-entrap-nonwhite-poor-juvenile-offenders.html>.
- 60 RICHARD A. MENDEL, THE ANNIE E. CASEY FOUNDATION, NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION 5-9 (2011).
- 61 Thomas A. Loughran, et al., *Estimating a Dose-Response Relationship Between Length of Stay and Future Recidivism in Serious Juvenile Offenders*, 47 CRIMINOLOGY 699, 726 (2009); See also NATIONAL ACADEMY OF SCIENCES, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH, 178 (2013).
- 62 RIYA SAHA SHAH & LAUREN A. FINE, JUVENILE LAW CENTER, FAILED POLICIES, FORFEITED FUTURES: A NATIONWIDE SCORECARD ON JUVENILE RECORDS 2 (2014).

63 S.B. 190, 2017-18 Reg. Sess. (Ca. 2017) (signed into law on October 11, 2017).

64 *Id.*

65 Maureen Washburn, *SB 190 Becomes Law, Ending Harmful, Unlawful, and Costly Juvenile Justice Fees*, CENTER ON JUVENILE AND CRIMINAL JUSTICE (Oct. 13, 2017), <http://www.cjcj.org/news/11780>.

66 Email from Jeffrey Selbin to Jessica Feerman, June 4, 2018.

67 Alabama, Arizona, California, Colorado, District of Columbia, Florida, Georgia, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin. One participant reported residing outside of the United States.

68 Arizona, California, District of Columbia, Florida, Georgia, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Missouri, Nebraska, New Jersey, North Dakota, Pennsylvania, and Washington.



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