

# *Gideon at Sixty:*

## *Advancing the Right to Counsel for Kids in Cuyahoga County*

**THE WREN COLLECTIVE**

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# Executive Summary

Sixty years ago, the Supreme Court held that Clarence Earl Gideon, a man accused of a felony, had the right to an attorney, despite not being able to afford one. Since then, the constitutional right to counsel has continued to expand—to those facing incarceration for any criminal offense, to children facing delinquency charges, and to all critical stages of representation. As part of our research into whether, across the country, we are meeting *Gideon's* lofty promise, the Wren Collective examined the provision of indigent defense in Cuyahoga County.

We chose to specifically focus on the representation Cuyahoga's children were receiving for two reasons. First, the juvenile court and its assignment of counsel received media attention in early 2023, highlighting a unique characteristic about the county's public defender. Unlike many offices across the country, the public defender was seeking more, rather than fewer, cases. Instead of an "overworked and underpaid" office, Cuyahoga appeared to have a reasonably compensated, skilled set of attorneys who wanted to provide representation to more kids. Second, throughout our initial interviews, we heard concerns about the representation children receive, especially when it comes to bindovers—transfers of juvenile cases to adult court. Cuyahoga sends more kids to adult court than any other county in Ohio, and the overwhelming majority of those kids are Black.

*As we looked closer at the system, we learned that the concerns people shared were justified*

As we looked closer at the system, we learned that the concerns people shared were justified. Cuyahoga's juvenile court judges are underutilizing the county public defender, an office of trained and dedicated attorneys, social workers, investigators, paralegals, and clerks. Though the office can take more cases and is set up to provide the robust support that children often need, judges assign private attorneys over public defenders to the majority of the cases in the county. But those private attorneys are generally not providing similarly robust representation, and many do not appear to be qualified to take on the most serious cases in the county. That means that the majority of kids in Cuyahoga are losing out on representation that would likely serve them better.

We also found that Cuyahoga's assigned counsel system suffers both from too much interference and not enough oversight. Judges routinely pick attorneys to assign to cases, yet the court does little to ensure that those attorneys are meeting state education and experience requirements to serve as appointed counsel in those cases.

The good news is Cuyahoga can fix these problems. We recommend that the Cuyahoga County Juvenile Court appoint the public defender to represent all children facing delinquency charges, and that the public defender, rather than the court, determine when assigned counsel is needed. We also recommend the county establish an independent assignment process that adheres to a rotary system for attorney assignments, and that the attorneys who are on the assignment list be trained and their qualifications verified.

We recognize our recommendations will take effort, political will, and commitment from multiple stakeholders to implement, but we are confident this is a place that is up to the challenge.

Cuyahoga County bursts with possibility. It has the potential to do what seems impossible in other places—make real and lasting change. We hope that this report, with its focus on key problems and specific ways to solve them, will help it do so.

## Overview Of Indigent Defense In Ohio

Reimbursement comes with responsibilities

Ohio has 88 counties and each gets to choose how it will fulfill *Gideon's* promise. The counties can set up a public defender office, contract with attorneys at a non-profit or in private practice, or use some combination of these options.<sup>1</sup> Cuyahoga has both a juvenile public defender and a list of private attorneys who represent children accused of crimes. Counties pay for these lawyers through a mix of state and local funding.<sup>2</sup>

The county sets a budget for its public defender, and a portion of that budget is paid for by the Ohio Public Defender (OPD). OPD is tasked with reimbursing counties a percentage of the money they spend providing representation to indigent people. Accordingly, it also reimburses the county the money it pays individual private lawyers to take cases.

That reimbursement comes with some specific responsibilities. To qualify for reimbursement, state law requires that a county's attorney appointment system:

- be independent of individual influence by judges, prosecutors, and elected officials;
- ensure that appointments are widely distributed by using a rotary system that pairs the complexity of the case with attorneys who meet the qualifications to handle such cases;
- have a written application process for inclusion, review, advancement in qualifications, and removal;
- maintain a record of all appointments, attorney refusals to accept appointments, and attorneys' qualifications to accept cases based upon degree and severity of the charge; and
- not charge any fees or require membership in any organization as a condition of joining the appointment list.<sup>3</sup>

State law also requires that private attorneys meet specific education and experience standards to receive reimbursable appointments in juvenile court.<sup>4</sup> These standards were created to help ensure children receive "effective and meaningful legal services."<sup>5</sup>

# Findings

We found three core problems with the way the right to counsel is provided to kids in Cuyahoga:

- The county has a strong and well-resourced public defender, but the juvenile court arbitrarily curtails the number of kids the public defender can represent.
- On the whole, the private attorneys the court assigns instead of the public defender are not providing similarly robust representation, and there is little oversight to ensure that they do.
- Even if those private attorneys were providing excellent representation, the appointment process in Cuyahoga undermines the integrity of every attorney-client relationship it creates. A process that allows judges to routinely choose the lawyers who get assigned cases turns judges into “employers” and runs the risk that attorneys will work to please them instead of their clients.

We explore each in further detail below.

## **I. The Cuyahoga County Public Defender is structured to provide high-quality representation, which leads to positive outcomes for youth—especially those facing bindover.**

*When a judge appoints the public defender to a case, the child gets more than an attorney*

Cuyahoga County’s public defender office has a juvenile department staffed with a division supervisor, a supervising attorney, 25 staff attorneys, and a full-time vertical defender.<sup>6</sup> The juvenile department also has five social workers, including a supervisor, who can help investigate a child’s life history and mental health; and an investigator and support staff, who can help find and review evidence.<sup>7</sup> The department is in the same building as the juvenile court and the juvenile detention center, making both courtrooms and clients easily accessible to the defense team.<sup>8</sup>

When a judge appoints Cuyahoga’s juvenile public defender to a case, the child gets more than an attorney. In many instances, especially those involving serious felony charges, the child will get a team of individuals dedicated to their representation, including an attorney, social worker, and investigator.<sup>9</sup> The office also readily provides funds to hire any needed experts to evaluate the child and determine whether they struggle with mental illness or developmental disabilities, and whether they actually understand the court proceedings they are facing. That defense team will also have access to the office’s appellate division, which helps identify changing areas of the law, ensure the record is properly developed, and argue complex legal issues.

All of this is important given the nature of juvenile representation, especially in cases involving potential transfer to adult court, or what Ohio refers to as a “bindover.”<sup>10</sup> In cases involving discretionary bindovers, before anyone

determines whether the child committed the crime, a judge must determine whether the child's case should stay in juvenile court or whether they should be treated as an adult.<sup>11</sup> To help judges answer that question, an attorney must develop a comprehensive understanding of the child and then effectively present that information to the court at an "amenability hearing." Social workers, mitigation specialists, and investigators are essential to this work.

The defense team will find and assess school and medical records, interview family members and guardians, schedule mental health and competency assessments, and determine if the child has any special needs or disabilities. They build trust to learn about family histories that might be difficult to share. They uncover connections between past trauma and current behavior, relying on assessments by outside experts. They identify the specific experts needed to fully understand the child and what interventions would be most effective and appropriate. They then present the evidence to the judge to help convince them that the child would be well-served by staying in juvenile court, where they will have access to support services that can aid in rehabilitation.

This critical information can also be used during plea negotiations with the prosecutor. It can have a significant impact on a judge's ultimate disposition or sentencing decision. These teams and their skills are also often deployed in cases where the child, though not facing transfer to adult court, could still receive a lengthy sentence of confinement.

*"Vertical attorneys" continue to represent children even if their case does end up in adult court*

Another benefit of Cuyahoga's public defender representation is the assignment of "vertical attorneys."<sup>12</sup> For children who may end up transferred into the adult system, the public defender assigns an attorney who will continue to represent them even if the case does end up in adult court.<sup>13</sup> This continuity of counsel is important. The trust built between the defense team and the client already exists, so the child does not need to meet or become familiar with another attorney or team. They can continue to build on work previously done at the probable cause or amenability hearing, whether in service of a defense to culpability or a later presentation at sentencing. In comparison, a child who is represented by a court-appointed private attorney will very likely be appointed a new lawyer if their case is ultimately transferred to adult court.<sup>14</sup>

These two features of public defender representation—robust defense teams and vertical attorneys—ensure that public defenders are meeting national juvenile defense standards for representing children who face transfer to adult court.<sup>15</sup> These practices also have shown significant success in keeping children in Cuyahoga's juvenile court. Since the implementation of its vertical attorney system in early 2022, nearly 90% of the discretionary bindover cases the public defender has resolved ended with the child remaining in the juvenile court.<sup>16</sup> For each case kept in juvenile court, the child avoided an adult sentence—sometimes, a lengthy one—a permanent criminal record, and the safety concerns posed by adult prisons. Statistically speaking, those children will also be less likely to commit crimes in the future and more likely to contribute positively to their communities when they are adults.<sup>17</sup>

In sum, Cuyahoga County has cultivated and pays for a juvenile public defender office that has the staff and resources to provide high-quality representation to children facing delinquency or adult criminal charges. But the appointment practices of Cuyahoga’s juvenile judges have curtailed their efforts to deliver that representation to as many children as possible.

## **II. The Cuyahoga County Juvenile Court is underutilizing the public defender.**

**25%**

*of all juvenile delinquency cases in the county appointed to the public defender’s juvenile department in 2022*

Though the public defender’s juvenile department has been in operation for decades, Cuyahoga’s juvenile court judges have historically appointed it to significantly fewer cases than private attorneys and fewer cases than their capacity allows. In late 2022, Chief Public Defender Cullen Sweeney projected that the juvenile department had the capacity to handle twice as many cases as it had received, including serious felony cases and bindovers.<sup>18</sup> That year, the office handled just 25% of all juvenile delinquency cases in the county.<sup>19</sup>

In Cuyahoga, judges decide which attorneys get which cases.<sup>20</sup> When a child is charged with an offense in Cuyahoga County, the case is forwarded to the individual judge who will serve as the judge for the remainder of the case.<sup>21</sup> That judge or that judge’s staff select the individual attorney who will represent the child.<sup>22</sup>

Before 2023, many of those judges decided that private attorneys should get more cases than the public defender.<sup>23</sup> At that time, there was no guidance on when a judge should or would appoint the public defender instead of a private attorney from the assigned counsel list. The Cuyahoga County Juvenile Court Local Rules regarding appointments did not mention (and still do not mention) the Cuyahoga County Public Defender, and neither the county nor the court requires that judges assign the office to any juvenile case.<sup>24</sup>

That system led to wide disparities in the appointment of the office.<sup>25</sup> Judges often reassigned cases from the public defender, who would represent detained youth during their first appearance in court, to private attorneys—with no explanation or rationale for terminating the existing attorney-client relationship.<sup>26</sup>

Things changed somewhat in early 2023 because of the public defender’s efforts to increase their juvenile representation in the county.<sup>27</sup> In January of that year, the juvenile court judges agreed to appoint the public defender to more cases, using the allocation system the common pleas court judges use.<sup>28</sup> Under the system, the public defender should receive all new delinquency cases ending in 1, 3, 5, or 7. Attorneys from the assigned counsel list should receive appointments for even-numbered cases and those ending in 9. But, as Administrative Judge Thomas O’Malley noted in his letter describing the change, the public defender will not take all of the cases designated under the allocation system because some of those cases will present conflicts or

*Disparities in assignment rates remain, with the public defender receiving as low as 17% of appointments in one courtroom and as high as 53% of appointments in another*

will be new cases of clients already assigned to a private attorney.<sup>29</sup> Even if the new system functioned as promised, the public defender would not come close to receiving the majority of juvenile appointments. Further, data from the first six months of 2023 indicates that disparities in assignment rates remain, with the public defender receiving as low as 17% of appointments in one courtroom and as high as 53% of appointments in another.<sup>30</sup>

This underutilization makes Cuyahoga an outlier. In each of the most populated Ohio counties that have a public defender, that office is appointed to all incoming delinquency cases.<sup>31</sup> Due to conflicts of interest (like when there are co-defendants who need lawyers from different offices<sup>32</sup>) and caseload caps (set by state law at 200 delinquency cases per year<sup>33</sup>), private attorneys are subsequently appointed to handle a small share of cases. In Franklin County, for example, the public defender accepts all of the delinquency cases; if there is a conflict or if the attorneys are at capacity, it refers the case to the assigned counsel office for appointment of a private attorney.<sup>34</sup> In Hamilton County, the same process exists: the public defender has the opportunity to take every case but can assign private counsel instead if it finds there is a conflict or that its current capacity does not allow for any additional appointments.<sup>35</sup> In Montgomery County, the public defender assigns a specific juvenile attorney to each courtroom and that attorney takes all incoming cases unless the office determines there is a conflict or that the attorney has reached their caseload limit.<sup>36</sup>

Cuyahoga's system stands in stark contrast to similar counties in Ohio. Given that its public defender is structured to provide high-quality, effective representation to its clients and has a track record of doing so, there is no good reason to prevent the public defender from representing as many kids as possible who need an attorney.

### **III. Private court-appointed attorneys do not provide better representation than the public defender and do not have better outcomes.**

The court's decision to rely primarily on private court-appointed attorneys instead of the county public defender might make sense if private attorneys were, on the whole, providing better or even similarly robust and zealous advocacy to children. But data refutes this hypothesis.

In 2022, when the public defender made a concerted effort to increase the number of kids the office represents, it argued its attorneys were better suited to represent kids facing the most serious charges because of their holistic defense approach and vertical attorneys. News coverage about the push for more cases noted that "private attorneys have similar resources or can use the same resources from the Juvenile Detention Center,"<sup>37</sup> and that attorneys can "apply to the court for funding" and "petition the court to satisfy whatever need may arise given an individual case."<sup>38</sup>

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No motions for social workers or investigators were filed by private attorneys and no requests for reimbursement were submitted for such resources

But when we looked to see whether private attorneys were requesting the funds to create similar defense teams, we could find no evidence of this practice. Records from the Cuyahoga County Juvenile Court and the Ohio Public Defender indicate that no motions for social workers, investigators, or experts were filed in 2022 or the first six months of 2023 by private attorneys and that no requests for reimbursement were submitted for such resources.<sup>39</sup> The absence of these requests and reimbursement points to a disparity in the structural quality of representation provided by the public defender’s office and private attorneys generally.

The juvenile public defender also argued that they visited their clients far more often than private attorneys do, likely a result of being in the same building as the detention center where the kids are held. To determine whether this was true and to what extent, Wren requested the visitation logs for the detention center. By analyzing the time in confinement and number of in-person attorney visits during that confinement for a small sample of kids, we found that public defenders did visit their clients at the detention center, on average, about three times as much as private attorneys did.<sup>40</sup>

Finally, an examination of bindovers that were filed in 2022 shows a difference in outcomes among public defenders and private attorneys. With both mandatory and discretionary bindovers, the public defender has a better record of keeping their clients in the juvenile system than private counsel, whether appointed or retained.<sup>41</sup>

	Assigned Counsel	Private Counsel	Public Defender
<b>Clients</b>	51	39	36
<b>Cases</b>	61	49	42
<b>Mandatory Bindovers</b>	25 out of 34 sent to adult court (74%)	18 out of 24 sent to adult court (75%)	12 out of 26 sent to adult court (46%)
<b>Discretionary Bindovers</b>	7 out of 27 sent to adult court (26%)	15 out of 25 sent to adult court (60%)	2 out of 16 sent to adult court (13%)

These disparities may very well be the result of a difference in how the public defender approaches its bindover cases.

*It shows that social workers, experts, investigators, and vertical representation make a meaningful difference in the results of bindover proceedings.<sup>42</sup>*



#### **IV. Cuyahoga does not ensure that its court-appointed attorneys meet state law experience and education requirements.**

Because Cuyahoga relies on private attorneys to deliver representation to the majority of youth facing accusations in its juvenile court, it is also worth understanding and examining Cuyahoga's juvenile court-appointment systems.

Ohio requires courts that are seeking reimbursement for their indigent defense costs to "have a written application process for inclusion, review, advancement in qualifications, and removal from the appointed counsel list."<sup>43</sup> To get on the Cuyahoga County Juvenile Court's list, attorneys fill out an application that essentially serves as a "checklist," outlining the qualifications that are statutorily required if the court wants to seek reimbursement for the attorney.<sup>44</sup> The application asks attorneys whether they meet those qualifications, but does not require them to provide documentation showing that they do.<sup>45</sup> This practice stands in contrast to Cuyahoga's adult system, which requires attorneys to name the trials in which they have represented someone and include a copy of their malpractice insurance and Continuing Legal Education (CLE) transcript,<sup>46</sup> and Franklin and Hamilton County's juvenile systems, which also require the submission of a CLE transcript and a list of qualifying trials.<sup>47</sup>

Cuyahoga fails to collect critical information during the application process and has no system in place to confirm that attorneys meet state requirements to handle specific delinquency cases.

*There is no independent verification process and there is no review process. Attorneys essentially "police themselves."<sup>48</sup>*

*More than half of the attorneys did not appear to have the education credits required to represent children in felony cases*

Given concerns expressed during our interviews about this issue, Wren sought to determine whether Cuyahoga's self-policing system was effective at ensuring that attorneys met required qualifications. To answer this question, we requested the juvenile court's list of attorneys who were deemed qualified to take on bindover or serious-youthful-offender (SYO) cases and then requested the CLE transcripts of those attorneys.<sup>49</sup> We then developed a list of guidelines<sup>50</sup> by which to evaluate the CLEs taken by those attorneys and based on that evaluation, categorized each as qualified, possibly qualified, or unqualified. Of those 45 attorneys, more than half did not appear to have the education credits required to represent children in felony cases.<sup>51</sup> None of those attorneys who failed to meet the requirement sought an exemption from the Ohio Public Defender for that biennium.<sup>52</sup> Many of them were included in reimbursement records from the state for fiscal years 22 and 23.<sup>53</sup>

We were unable to determine if the attorneys who met the education requirement also met the trial experience requirement. For juvenile cases involving first- or second-degree felonies, the attorney must have prior

experience as trial counsel in at least two bench trials. For a bindover or serious youthful offender case, the attorney must have prior experience as lead counsel in bench trials as well as jury trials. Because Cuyahoga does not request that attorneys provide this information, and because we were unable to collect records that would allow us to confirm that attorneys met this qualification, we could not verify any attorney's compliance.

Importantly, these state education and experience requirements do not ensure an attorney will be effective or even work hard, but they do at least establish minimum expectations for those who want to represent children in juvenile court. The expectations are not stringent nor unreasonable, especially considering that attorneys must take 24 hours each biennium anyway to maintain their license. The rule simply requires that half of those hours be taken in the area of law in which the attorney practices. But many of the court-appointed attorneys in Cuyahoga County who have sought to represent children facing bindovers appear not to have met them.

#### **V. Cuyahoga's assignment process undermines the quality and integrity of the attorney-client relationship.**

*Cuyahoga's appointment system is more relational than rotary*

In addition to requiring that attorneys meet specific standards, Ohio law also requires that the systems used to appoint them fulfill certain requirements. Courts seeking reimbursement for their appointments, for example, must use a "rotary system" to ensure that such appointments are distributed as widely and equitably as possible. They must also be "independent from individual influence by a member of the judiciary."<sup>54</sup>

Cuyahoga's appointment system is more relational than rotary. Interviews with private attorneys painted a picture of an appointment system driven largely by judicial preference. Such a system creates an untenable conflict of interest that can chill the representation provided by court-appointed attorneys to their clients.

When judges routinely decide which attorneys get to take which cases, there is a significant risk that the attorneys will act in a way that ensures they will receive future appointments, which does not necessarily translate to acting zealously on behalf of their client.<sup>55</sup> The judge essentially becomes "their employer," and while some judges may want to appoint the attorneys who fight the hardest on behalf of their clients, others may prefer a campaign contributor, a person who is willing to plead their client to a charge quickly, or a person who helps to save financial resources by not asking for investigators or experts.<sup>56</sup> Because of the obvious conflict that exists when judges appoint lawyers, the American Bar Association has urged that indigent defense systems exist independently from the judiciary.<sup>57</sup>

Not only does this kind of judicial interference in attorney assignments undermine the attorney-client relationship, it also makes it difficult for newer

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*private attorneys received over 30% of all delinquency case appointments*

attorneys, or attorneys who do not have established relationships with judges or their staff, to gain experience in court.<sup>58</sup> Needing to know the judge serves as a barrier to entry, which means the list of available assigned counsel will grow far more slowly than it would if every interested attorney was provided an equal opportunity to receive appointments aligned with their experience and training.<sup>59</sup>

Cuyahoga’s juvenile court appointment system is susceptible to these problems because it is not independent or equitable. Though the judges recently agreed to appoint the public defender to more cases, they still choose the individual private lawyers who will be assigned to the rest.<sup>60</sup> And though those appointments should generally be dispersed on a rotational basis,<sup>61</sup> data indicates that individual attorneys are favored. For example, between May 2021 and April 2022, just three private attorneys received over 30% of all delinquency case appointments.<sup>62</sup> Seven private attorneys received over 50% of the delinquency cases—more appointments than the entire public defender office, which has 28 juvenile attorneys.<sup>63</sup>

Reimbursement data for fiscal years 2022 and 2023 bear out these earlier findings. In examining the number of reimbursed cases for Cuyahoga’s 45 bindover-qualified attorneys, we found that five attorneys received nearly 50% of those reimbursed delinquency cases for those two fiscal years.<sup>64</sup> Three attorneys received over a 100 reimburseable cases in fiscal year 2023 while 34 attorneys received less than a third of that number.<sup>65</sup>

Under Ohio Administrative Code Section 120-1-10, an appointment system must be “independent from individual influence by judges” and must “ensure that appointments are distributed as widely as possible...by using a rotary system...”<sup>66</sup> Unfortunately, Cuyahoga’s appointment system flouts those rules and creates an indefensible risk that court-appointed lawyers will work to please the judge instead of their client.

## Recommendations

### **I. The Cuyahoga County Juvenile Court should appoint the public defender to all delinquency cases and allow them to refer cases to conflict counsel when needed.**

Cuyahoga County should amend its local rules so that the public defender office is the default assignment for every child in need of an attorney. This system works effectively in Franklin County and Hamilton County (which, along with Cuyahoga, are the largest counties in Ohio<sup>67</sup>) and would bring Cuyahoga County in line with Ohio’s requirement that indigent defense exist independently from judicial interference.<sup>68</sup> Such a change is both logistically and financially possible.

In Franklin and Hamilton County, the public defender screens every new juvenile case to determine whether the office has represented any co-defendants, victims, or named witnesses. If there is no conflict and they are not at capacity, then the public defender takes the case.<sup>69</sup> If there is a conflict, the public defender refers the case to assigned counsel. The Cuyahoga County Public Defender can implement processes to screen all incoming cases for conflicts, and then similarly refer any conflict cases for assignment of private counsel. The county can continue assigning attorneys to previous clients if the child returns with new charges and no conflict exists in the new case.

The Cuyahoga County Public Defender estimates that it would cost approximately \$1.04 million to handle all juvenile delinquency cases in the county.<sup>70</sup> This number includes staffing, space, and miscellaneous costs (expert fees, trainings, employee overhead, etc.) and is based on the assumption the office would ultimately end up taking around 70% of the cases, due to conflicts and existing client relationships with private attorneys.<sup>71</sup> To put the cost in context, assigned private counsel is projected to bill about \$4.81 million in 2023<sup>72</sup>—a number that does include appointments as guardians ad litem and to abuse, neglect, and dependency cases, but also suggests that a shift to the public defender would likely not cost the county more than what it is currently paying private attorneys.<sup>73</sup> And the shift to the public defender comes with the added benefit of assigning defense teams rather than single attorneys to the kids facing the most serious charges.

The office would also need space to expand.<sup>74</sup> The juvenile public defender is conveniently located in the same building as the court and the detention center, so accommodating the additional staff within the same building is essential. The Cuyahoga County Public Defender believes this physical expansion is possible.<sup>75</sup>

While it will take some time for the public defender to hire and train new staff to begin taking the majority of cases in the county, the office can immediately handle more cases than it currently receives.<sup>76</sup> We recommend that the county first begin by assigning the public defender to represent more of the children who are held in the juvenile detention center. These are likely the more serious cases, which makes the public defender's holistic approach even more critical.

*Further, data shows that public defenders visit their clients in detention approximately three times more often than their private counterparts did.<sup>77</sup>*

Ensuring that children who are held in detention have meaningful contact with their attorneys should also be a priority.

Ultimately, Cuyahoga's juvenile court judges should amend the local rules and require assignment of the public defender to all incoming delinquency cases, allowing it—rather than the court—to determine when the assignment of private counsel is necessary.<sup>78</sup>

*It is critical that private counsel are also meeting their obligations to provide high-quality representation to their clients*

## **II. The Cuyahoga County Juvenile Court should provide training to assigned counsel.**

It will take time for the office to expand to handle the majority of the cases in the county. But even when it reaches such capacity, it will have to refer cases to assigned counsel when there are conflicts of interest. As such, it is critical that private counsel are also meeting their obligations to provide high-quality representation to their clients.

One of the primary areas of concern we found with the representation delivered by attorneys outside of the public defender's office is the failure to use social workers, investigators, and experts in their cases, especially when the child is facing bindover. To address this gap in representation, we recommend the juvenile court hold a mandatory training for attorneys who want to receive court appointments that explains how to request funds for these professionals and why such requests are necessary. The court should also invite a defender organization—for example, the county public defender, the Ohio Public Defender, or the Children's Law Center—to provide a session on how to effectively use social workers, investigators, and experts to advocate during amenability hearings, develop mitigation evidence, and prepare sentencing memorandums.

## **III. Cuyahoga should establish an independent process for appointing private attorneys to cases.**

Cuyahoga should establish an independent assignment process that uses a centralized rotary system to assign private attorneys to cases and monitor the caseloads of those assigned private attorneys. Judges should no longer routinely be involved in the assignment of individual attorneys to cases or exercise any influence over the distribution of appointments to private attorneys.

Other counties use independent rotary systems to assign private attorneys to cases. In Franklin County, for example, three private attorneys from the assigned counsel list are scheduled to receive appointments each day. If the public defender has a conflict, it refers the case to the assigned counsel office, which assigns the case to the next attorney on that day's list who is qualified to take the case.<sup>79</sup> In Hamilton County, the juvenile public defender handles the assignment of attorneys for all cases, and when it needs outside counsel, it uses one of its court administrators to select the next attorney from a list of qualified counsel.<sup>80</sup> In Montgomery County, a case flow coordinator uses a "randomizer" to pull a name from their assigned counsel list.<sup>81</sup> If that attorney is not available, they simply run the randomizer again to select an alternative. The National Center for State Courts (NCSC) has previously recommended that Cuyahoga delegate "responsibility for administration of the assigned counsel system" to the county public defender commission, explaining that doing so "not only assures the independence of indigent defense, but it also provides focused public accountability for the efficiency and quality of services."<sup>82</sup> NCSC further noted, "Removing oversight from the judiciary is not just an important way to

advance the independence of public defense: it also helps to free judges from any appearance of impropriety or undue political pressures, in keeping with the Canons of Judicial Ethics.”<sup>83</sup>

Whatever process for assignment the county adopts, its goal should be independence from the judiciary and equitable distribution of court appointments.<sup>84</sup>

#### **IV. The assigned counsel office should strengthen its court-appointment application and implement processes for verifying attorney qualifications.**

Cuyahoga engages in little oversight to ensure that the attorneys assigned to represent children have the minimum training and experience to do so. To change that, Cuyahoga should revise its application process for assigned counsel and require the case number, county, and year of the trial or trials the attorney is using to meet the experience requirement. It should require that each attorney attach their CLE transcript to the application and list the CLE credits that fulfill the educational requirements for the category of appointments they wish to take. It should then review those credits to determine whether they actually do fulfill the educational requirements. Cuyahoga County should establish a process for notifying and removing any attorneys who are found to lack the requirements to handle certain categories of cases and provide them specific steps for becoming compliant. If they fail to do so, the county should remove them from the list. Finally, it should require attorneys to annually verify that they continue to meet those requirements.

Local oversight of attorney qualifications is the practice in other major counties throughout Ohio.<sup>85</sup> Franklin County has one person who handles the attorney application and verification process and manages a list that is twice the size of Cuyahoga County’s.<sup>86</sup> Hamilton County’s juvenile public defender manages the assigned counsel list for the county and also has steps in place to continually verify attorney qualifications.<sup>87</sup> Montgomery County is in the process of revamping their application and verification processes, and acknowledges the importance of having them.<sup>88</sup>

The juvenile court has been relying upon its general counsel office to maintain the list of qualified counsel and receive applications to that list.<sup>89</sup> But this office is also responsible for a plethora of additional court duties, including responding to public record requests, managing the IT department, producing legal research and analysis for judges, and offering legal guidance to various court departments. Cuyahoga needs a dedicated person or team that can establish and implement these processes and ensure that attorneys are complying with them.

*Transitioning to a system of oversight and accountability is necessary to ensure only qualified lawyers represent children.*

**V. The Ohio Public Defender Commission should end its reimbursement of Cuyahoga County’s juvenile court appointments if the county fails to bring its appointment system into compliance by July 1, 2024.**

Cuyahoga seeks reimbursement from the state for the cost of providing indigent defense. Accordingly, the Ohio Public Defender Commission must ensure that the county is in compliance with state laws designed to ensure effective representation.<sup>90</sup> In the past, the Commission has used its reimbursement power to compel changes necessary to ensure that its standards are met. For example, in 2015, the Commission threatened to withhold reimbursement to Hamilton County after the county failed to keep its 2010 promise to provide private office space to its public defenders.<sup>91</sup>

Ohio Administrative Code Section 120-1-10 requires that both “attorneys *and the systems used to appoint attorneys* must meet the requirements of this rule” to qualify for reimbursement from the state. Cuyahoga’s system of regular judicial involvement in appointments violates the rule. Its impact—the inconsistent rates of public defender appointments among judges<sup>92</sup> and the consolidation of appointments among a small group of attorneys<sup>93</sup>—shows that appointments are not “widely” or “equitably” distributed. The system contravenes rules designed to ensure effective representation of indigent clients.

If Cuyahoga County does not change its process, the Commission should provide notice that it is not in compliance, along with the violations that must be corrected. It should give the county six months to correct those problems, at which time it should reevaluate the county’s practices. Evaluation should include not just a review of local rules and formal policies, but also court observation, analysis of assignment and reimbursement data, and interviews with local private attorneys, public defenders, judges, and any court staff involved in the assignment of counsel.

If Cuyahoga refuses to bring its appointment practices into compliance by July 1, 2024, the Ohio Public Defender Commission should discontinue reimbursement of the indigent defense operations that violate the Administrative Code until Cuyahoga elects to change.

## Conclusion

Every child deserves an excellent attorney. It should not matter whether they get a public defender or a court-appointed attorney. But, right now it does. Cuyahoga must address the problems inherent in its assignment system to remove the barriers to quality representation for its kids.

# Appendix A

## Attorney Qualifications for County Reimbursement, Juvenile Cases

Ohio Administrative Code Section 120-1-10 governs attorney appointment systems and qualifications. The Ohio Public Defender created a chart that outlines the current requirements for qualifying for reimbursement in juvenile cases (reproduced below with permission from the Office of the Ohio Public Defender).

Attorney Qualifications for County Reimbursement, Juvenile Cases		
Pursuant to Ohio Administrative Code section 120-1-10, appointed counsel must meet these requirements in order to qualify for state reimbursement. The state public defender may refuse to reimburse the county for cases on which appointed counsel do not meet these requirements.		
Juvenile cases	Training*	Experience **
Unruly, truancy, violation of court order, and misdemeanors cases	Within two years prior to the appointment, completed minimum six hours CLE in juvenile delinquency practice and procedure  <b>OR</b> Successful completion of clinical education program on juvenile law	In lieu of required training, one year of experience as an attorney
Juvenile OVI cases	Within two years prior to the appointment, completed minimum six hours CLE focused on OVI practice and procedure	
Juvenile cases involving 3rd, 4th, and 5th degree felonies	Within two years prior to appointment, minimum 12 hours CLE in criminal practice and procedure, at least six of which must be in juvenile delinquency practice and procedure	At least one year of experience as attorney practicing in juvenile delinquency law
Juvenile cases involving 1st and 2nd degree felonies	Within two years prior to appointment, minimum 12 hours CLE in criminal practice and procedure, at least six of which must be in juvenile delinquency practice and procedure	At least two years of experience as attorney practicing in juvenile delinquency law <b>AND</b> Within 10 years preceding the appointment, prior experience as trial counsel in at least two bench trials in juvenile court, at least one of which was as lead counsel
Bindover and serious youthful offender cases	Within two years prior to appointment, minimum 12 hours CLE in criminal practice and procedure, at least six of which must be in juvenile delinquency practice and procedure	Requisite experience to be appointed to a juvenile case based upon the highest degree of charge in the case <b>AND</b> Requisite experience to be appointed to an adult case based upon the highest degree felony charged <b>OR</b> Co-counsel who meets the adult-case training and experience requirements must also be appointed
Juvenile cases involving murder and aggravated murder cases	Within two years prior to appointment, minimum 12 hours CLE in criminal practice and procedure, at least six of which must be in juvenile delinquency practice and procedure	At least three years of experience as attorney practicing in juvenile delinquency law <b>AND</b> Within 10 years preceding appointment, prior experience as lead trial counsel in at least three bench trials in juvenile court, at least two of which involved a felony-level charge

\*CLE hours must be certified by the Ohio Supreme Court commission on continuing legal education.

\*\* Attorneys appointed to represent indigent clients in felony cases must meet the applicable requirements. Where an attorney within ten years prior to the appointment successfully completed a trial training program, consisting of 30 hours of instruction or more, the training program will satisfy any requirement in OAC 120-1-10 to serve as: lead counsel in one criminal jury trial and lead counsel in one delinquency bench trial.

**Source:**

Ohio Public Defender *Attorney Qualifications for County Reimbursement, Juvenile Cases* [https://opd.ohio.gov/static/Law%20Library/Training/Attorney%20Qualification%20and%20Exemption%20Guidance/OAC\\_Juvenile\\_updated\\_11-2022\\_v2%20.pdf](https://opd.ohio.gov/static/Law%20Library/Training/Attorney%20Qualification%20and%20Exemption%20Guidance/OAC_Juvenile_updated_11-2022_v2%20.pdf).



## Appendix B

# Rate of Public Defender Assignments in 2023

The Cuyahoga County Juvenile Court provided Wren with records of delinquency cases filed in juvenile court from January 1, 2023, through June 30, 2023. For each record, the case number, judge, and filing date was included, with a notation of whether the child was represented by “assigned counsel,” a public defender, or privately retained attorney. Occasionally, no attorney was listed for the child.

We calculated the rate of assignments by dividing the number of cases where a public defender was assigned by the number of cases where a public defender or assigned counsel could have been assigned. We also received the list of cases and assignments for 2022, but noticed there was a disparity in the total number of cases for which we received information and the number of official cases listed in the court’s 2022 annual report. We were unable to determine whether any cases were missing in the list we received for 2023.

	<b>Public Defender Assignment Rates</b>
<b>Chambers</b>	<b>2023</b>
Celebreeze, Nicholas	37%
Floyd, Alison	52.7%
McDonough, Anne	27.4%
O’Malley, Jennifer	17.3%
O’Malley, Thomas	52.1%
Sweeney, Kristin	32.5%

The assignment process for each case is controlled by the individual judge or magistrate (and their judicial staff) handling the case. The Cuyahoga County Court of Common Pleas Juvenile Division Local Rule 14 states that the “court shall maintain an alphabetical listing of qualified assigned counsel” and that “the jurist shall select the next available individual from the assigned counsel list.” Judges may deviate from that list and instead “appoint any individual from the assigned counsel list” whenever that judge “determines that unique circumstances exist” or wants to “facilitate the expeditious management of the docket.”

**Source:**

List of assignments from January 1, 2023, through June 30, 2023, provided by Cuyahoga County Juvenile Court

## Appendix C

# Major County Comparison

**Default Assignment of Public Defender:** Does the county appoint the public defender to all delinquency cases? Does it rely on private attorneys primarily for conflicts or when the public defender no longer has capacity to take additional cases?

**Independent Appointment Process:** Are judges largely uninvolved in the selection and appointment of specific private attorneys to delinquency cases?

**Verification of Assigned Counsel Qualifications:** Does the county have a process to verify that assigned counsel meet the education and experience requirements of the Ohio Administrative Code?

	Default Assignment of Public Defender	Independent Assignment Process	Verification of Assigned Counsel Qualifications
<b>Cuyahoga</b>	No	No	No
<b>Franklin</b>	Yes	Yes	Yes
<b>Hamilton</b>	Yes	Yes	Yes
<b>Montgomery</b>	Yes	Yes	Yes <i>(process is currently being improved)</i>
<b>Summit</b>	Yes <i>(for everything but mandatory bindovers as the PD does not handle adult felony cases)</i>	Yes <i>(but rotary system does not appear to be consistently used)</i>	No

**Sources:**

Interviews with county public defenders and assigned counsel staff including:

- Sam Amata, Juvenile Division Supervisor, Cuyahoga County Public Defender
- Rebecca Steele, Juvenile Unit Chief, Franklin County Public Defender
- Angela Chang, Youth Defense Division Director, Hamilton County Public Defender
- Nikole Xarhoulacos, Child & Family Law Division Manager, Montgomery County Public Defender
- Byron Tocheri, Staff Attorney, Franklin County Domestic Relations and Juvenile Court
- Gina Feller, Chief Magistrate, Montgomery County Juvenile Court
- Andrea Whittaker, Director, Summit Legal Defenders
- Sarah Testa, Judicial Bailiff, Summit County Juvenile Court

## *Appendix D*

# Visitation Data and Analysis

Wren received visitation logs from the Cuyahoga County Juvenile Detention Center, detailing all in-person visits from January 1, 2022, through June 30, 2023. We also received a list of youth who were being held in the detention center on February 9, 2023 (“February 9th youth”) that included the number of days they were confined in the detention center during that 18-month period and the number of attorney visits they received during that period. Our analysis found that, on average, youth represented by a public defender saw their public defender once every 20.1 days, whereas youth represented by a private attorney saw their attorney once every 69.6 days. We did not distinguish between retained or court-appointed private attorneys as we did not have specific appointment data for those private attorneys.

By doing a regression analysis, we also found that the February 9th youth who had a public defender received an average of 12.9 attorney visits; youth with a private attorney had an average of 4.1 attorney visits. February 9th youth with a PD were in detention for an average of 259 days, and youth with a private attorney were in detention for an average of 289 days.

### **Sources:**

List of Children Held in Cuyahoga County Detention Center on February 9, 2023, provided by the Cuyahoga County Public Defender

Visitation Logs from Jan. 1, 2022 through June 30, 2023, provided by the Cuyahoga County Juvenile Detention Center

## Appendix E

# 2022 Bindover Case Analysis

In response to a public record request, the Cuyahoga County Juvenile Court provided a list of all bindover cases filed in the juvenile court in 2022. That list included whether the child was represented by assigned counsel, private counsel, or a public defender; and a date of transfer to adult court. That information is included in the chart below.

The absence of a transfer date could mean that the case was 1) was dismissed, 2) was successfully kept in juvenile court, or 3) has not yet been resolved by November 2023. For this reason, we focused on the number of cases that were transferred to adult court.

	<b>Assigned Counsel</b>	<b>Private Counsel</b>	<b>Public Defender</b>
<b>Clients</b>	51	39	36
<b>Cases</b>	61	49	42
<b>Mandatory Bindovers</b>	25 out of 34 sent to adult court (74%)	18 out of 24 sent to adult court (75%)	12 out of 26 sent to adult court (46%)
<b>Discretionary Bindovers</b>	7 out of 27 sent to adult court (26%)	15 out of 25 sent to adult court (60%)	2 out of 16 sent to adult court (13%)

**Source:**

List of 2022 Bindover Case Filings (received on Nov. 21, 2023, in response to Oct. 26, 2023 record request), provided by Tabitha Gillombardo, J.D. Candidate, Class of 2024, University of Pennsylvania Law School

## *Appendix F*

# Assigned Counsel Education Qualification Review Process and Findings

Cuyahoga County Juvenile Court does not meaningfully review or verify the qualifications of attorneys on its assigned counsel list. So, Wren relied upon guidance from attorneys in Franklin and Hamilton County who oversee the verification of assigned counsel in those jurisdictions to create guidelines to examine the education qualifications of attorneys on the court's assigned counsel list.

We limited our review to the 45 attorneys who were listed as qualified to receive bindover cases. All of these attorneys were required to complete 1) at least 12 hours of continuing legal education (CLE) in criminal practice and procedure, with 2) at least 6 of those hours in juvenile delinquency practice and procedure, within 2 years of appointment to a bindover case.

To review an attorney's qualifications, we requested the CLE transcript from their most recently completed biennium. The Ohio Supreme Court staggers the CLE reporting date for attorneys, with attorneys whose last names end in A through L reporting in odd-numbered years, and attorneys whose last names end in M through Z reporting in even-numbered years. Counties that verify that attorneys have completed their required hours generally request that they confirm ongoing compliance during their respective reporting years. Because the Code requires that attorneys complete their hours within two years of appointment, the biennium generally serves as a short-cut for those tasked with determining whether hours were completed within that time frame.

We placed each attorney we reviewed in one of three categories:

- **Qualified:** These attorneys clearly had at least 6 hours of juvenile delinquency practice and procedure, and 12 total hours in criminal law practice and procedure.
- **Possibly Qualified:** These attorneys potentially met the O.A.C. education requirement, but further information would be needed to confirm that certain courses would count as juvenile or criminal practice and procedure education.
- **Unqualified:** These attorneys clearly did not meet the requirements of O.A.C. 120-1-10 because they had not taken enough courses to satisfy the education requirement.

Importantly, our review only focused on assessing whether attorneys met the education requirements of the rule. We did not explore whether these attorneys also fulfilled the trial experience requirement of O.A.C. 120-1-10.

After conducting our review, we determined that more than half of the attorneys on the Cuyahoga County Juvenile Court's assigned counsel list who were designated as qualified to handle bindover cases did not meet the education requirements to do so.



**Sources:**

Assigned Counsel Master List (current as of August 15, 2023), provided by Cuyahoga County Juvenile Court

Attorney CLE Transcripts, provided by the Supreme Court of Ohio Office of Attorney Services

## Appendix G

# Guidelines for Assigned Counsel Qualification Review

1. Any courses that explicitly reference juvenile delinquency, juvenile law, or juvenile courts were counted (e.g., Juvenile Law Symposium, Juvenile Law Practice in Cuyahoga County).
2. Any courses sponsored by a juvenile justice-focused organization were counted (e.g., National Association of Counsel for Children Red Book Training, Annual Ohio Juvenile Defender Summit).
3. Any courses that covered a criminal law topic were counted (e.g., Sentencing Reform Update, Mental Health and Developmental Disability Court Attorney Seminar, Capital Defense Seminar). If the course referenced a crime—e.g., Domestic Violence Civil Protection Orders—we counted the course.
4. GAL courses were not counted if the title made it clear it was specifically tailored to the practice of guardians ad litem (e.g., Report Writing for GALs, Domestic Violence-Informed Practice for Guardians ad Litem, Child Abuse and Mandatory Reporting).
5. Generally applicable courses were not counted toward the requirement (e.g., Professionalism in the Courtroom, Navigating Ethics and Professionalism).
6. Appellate courses were not counted toward the requirement because these are treated as a separate required category in the Ohio Administrative Code. See [Ohio Admin.Code § 120-10-1\(N\)](#).
7. Some courses were multiple credit hours. If an agenda was publicly available, we tried to determine how many hours of that course were relevant to criminal practice and procedure. For example, the Ohio Prosecuting Attorneys Association hosted two-day CLE in 2020. A review of the publicly available agenda for that CLE shows that several of the hours covered employment law and civil liability issues (e.g., Contract Law 101, “Dewey” Understand Library Requirements?). Those hours would not count toward the criminal practice and procedure requirement, but if the attorney did not attend the full CLE, it was impossible for us to determine which sessions they did attend and for which they received credit.
8. When an ambiguous course was determinative of whether the attorney complied with the education requirement, we counted the course and noted that the attorney “possibly qualified.”
9. When a guardian ad litem course was determinative of whether the attorney complied with the education requirement (and the course was not explicitly directed at GAL work), we counted the course and categorized the attorney as possibly qualified. We note, however, that other counties do not count GAL courses toward the delinquency education requirement. Brian Tocheri, the staff attorney handling Franklin County’s assigned counsel application and verification processes, explained that guardians ad litem and attorneys fulfill two separate roles and operate very differently. So while the content of a GAL course may be “loosely tied” to delinquency cases, Franklin County’s juvenile court expects attorneys to take courses specifically focused on delinquency representation.

# Endnotes

- <sup>1</sup> *County Service Type Map*, OHIO PUBLIC DEFENDER, <https://opd.ohio.gov/resources/county-service-type-map>.
- <sup>2</sup> Scott Lundregan, *Indigent Defense Is a Priority in Ohio's Operating Budget*, OHIO BAR ASSOCIATION, Aug. 25, 2021, <https://www.ohiobar.org/member-tools-benefits/practice-resources/practice-library-search/practice-library/indigent-defense-is-a-priority-in-ohios-operating-budget/>.
- <sup>3</sup> Ohio Admin. Code § 120-1-10(A).
- <sup>4</sup> Ohio Admin. Code § 120-1-10; Appendix A.
- <sup>5</sup> *Exceptional Circumstances Exemption*, OHIO PUBLIC DEFENDER, [https://opd.ohio.gov/static/Law%20Library/Training/Attorney%20Qualification%20and%20Exemption%20Guidance/Sept-2023\\_OPD-Exemption-Guidance-and-Form.pdf](https://opd.ohio.gov/static/Law%20Library/Training/Attorney%20Qualification%20and%20Exemption%20Guidance/Sept-2023_OPD-Exemption-Guidance-and-Form.pdf).
- <sup>6</sup> *Organization Chart*, CUYAHOGA COUNTY PUBLIC DEFENDER JUVENILE DEPARTMENT (2022–2023).
- <sup>7</sup> Interview with Sam Amata, Juvenile Division Supervisor, Cuyahoga County Public Defender, in Cleveland, Ohio (Mar. 3, 2023).
- <sup>8</sup> *Id.*
- <sup>9</sup> Interview with staff of the Cuyahoga County Public Defender Juvenile Department, in Cleveland, Ohio (Mar. 3, 2023).
- <sup>10</sup> Stephanie Casanova, *Cuyahoga County Juvenile Court to Consider Assigning More Cases to Public Defender's Office*, SIGNAL CLEVELAND, Jan. 18, 2023, <http://signalcleveland.org/cuyahoga-county-juvenile-court-to-consider-assigning-more-cases-to-public-defenders-office/>.
- <sup>11</sup> Ohio Rev. Code § 2152.12(B)(3) and (C) (In making this determination, the court considers not just the nature of the crime, but also whether the child has any mental illness or intellectual disabilities, whether the child is emotionally, physically, or psychologically mature enough for the transfer, and whether there is sufficient time to rehabilitate the child within the juvenile system, among other factors.).
- <sup>12</sup> Letter from Cullen Sweeney, Chief Public Defender, Cuyahoga County Public Defender Office, to Hon. Thomas F. O'Malley, Administrative Judge, Cuyahoga County Juvenile Court (Sept. 13, 2022).
- <sup>13</sup> Interview with staff of the Cuyahoga County Public Defender Juvenile Department, in Cleveland, Ohio (Mar. 3, 2023).
- <sup>14</sup> *Id.*
- <sup>15</sup> NATIONAL JUVENILE DEFENSE CENTER, NATIONAL JUVENILE DEFENSE STANDARDS (2012), <https://www.defendyouthrights.org/wp-content/uploads/2017/10/National-Juvenile-Defense-Standards.pdf>; CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, TRIAL DEFENSE GUIDELINES: REPRESENTING A CHILD CLIENT FACING A POSSIBLE LIFE SENTENCE (2015), <https://cfsy.org/wp-content/uploads/Trial-Defense-Guidelines-Representing-a-Child-Client-Facing-a-Possible-Life-Sentence.pdf>.
- <sup>16</sup> Cullen Sweeney, Chief Public Defender, Cuyahoga County Public Defender Office, 2024–2025 Budget Request Presentation (Nov. 2, 2023).
- <sup>17</sup> Amanda Garrett, *Sending Kids to Adult Prisons Creating New Generation of Criminals*, AKRON BEACON JOURNAL, Nov. 12, 2023, <https://www.cincinnati.com/story/news/2023/11/11/ohio-law-mandates-some-ohio-kids-moved-system-built-for-adults-juvenile-prison-rape-justice-brain/70786570007/>; ILLINOIS DEPT. OF HUMAN SERVICES, FINDINGS: WHY SHOULD 17-YEAR-OLDS BE IN JUVENILE COURT? <https://www.dhs.state.il.us/page.aspx?item=64924>.
- <sup>18</sup> Stephanie Casanova, *Cuyahoga County Juvenile Court to Consider Assigning More Cases to Public Defender's Office*, SIGNAL CLEVELAND, Jan. 18, 2023, <http://signalcleveland.org/cuyahoga-county-juvenile-court-to-consider-assigning-more-cases-to-public-defenders-office/>.



[signalcleveland.org/cuyahoga-county-juvenile-court-to-consider-assigning-more-cases-to-public-defenders-office/](http://signalcleveland.org/cuyahoga-county-juvenile-court-to-consider-assigning-more-cases-to-public-defenders-office/).

<sup>19</sup> *Id.*

<sup>20</sup> Zoom interview with Sarah Cigic, Deputy Court Administrator and Chief Legal Counsel, Cuyahoga County Juvenile Court (Sept. 8, 2023).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Analysis of 2022 Judicial Assignment Data, provided by Cuyahoga County Juvenile Court (on file with author).

<sup>24</sup> See generally *Local Rules*, CUYAHOGA COUNTY COURT OF COMMON PLEAS JUVENILE DIVISION, [http://juvenile.cuyahogacounty.us/pdf\\_juvenile/en-US/LocalRules/Local\\_Rules\\_updated\\_%208\\_07\\_2023.pdf/](http://juvenile.cuyahogacounty.us/pdf_juvenile/en-US/LocalRules/Local_Rules_updated_%208_07_2023.pdf/).

<sup>25</sup> Analysis of 2022 Judicial Assignment Data, provided by Cuyahoga County Juvenile Court (on file with author).

<sup>26</sup> Letter from Cullen Sweeney, Chief Public Defender, Cuyahoga County Public Defender Office, to Hon. Thomas F. O'Malley, Administrative Judge, Cuyahoga County Juvenile Court (Sept. 13, 2022); Zoom interview with Sarah Cigic, Deputy Court Administrator and Chief Legal Counsel, Cuyahoga County Juvenile Court (Sept. 8, 2023).

<sup>27</sup> Stephanie Casanova, *Cuyahoga County Juvenile Court to Consider Assigning More Cases to Public Defender's Office*, SIGNAL CLEVELAND, Jan. 18, 2023, <http://signalcleveland.org/cuyahoga-county-juvenile-court-to-consider-assigning-more-cases-to-public-defenders-office/>.

<sup>28</sup> Letter from Hon. Thomas F. O'Malley, Administrative Judge, Cuyahoga County Juvenile Court to Cullen Sweeney, Chief Public Defender, Cuyahoga County Public Defender Office (Jan. 20, 2023).

<sup>29</sup> *Id.*

<sup>30</sup> Appendix B.

<sup>31</sup> Appendix C; Zoom interview with Cullen Sweeney, Chief Public Defender, Cuyahoga County Public Defender Office, (September 19, 2023).

<sup>32</sup> Ohio Rules of Professional Conduct 1.7 and 1.9.

<sup>33</sup> Ohio Admin. Code § 120-1-07(B).

<sup>34</sup> Phone interview with Rebecca Steele, Juvenile Unit Chief, Franklin County Public Defender Juvenile Unit Chief (Aug. 25, 2023).

<sup>35</sup> Phone interview with Angela Chang, Youth Defense Division Director, Hamilton County Public Defender Youth Defense Division Director (July 19, 2023).

<sup>36</sup> Phone interview with Nikole Xarhoulacos, Child & Family Law Division Manager, Montgomery County Public Defender (Sept. 8, 2023).

<sup>37</sup> Stephanie Casanova, *Cuyahoga County Juvenile Court to Consider Assigning More Cases to Public Defender's Office*, SIGNAL CLEVELAND, Jan. 18, 2023, <http://signalcleveland.org/cuyahoga-county-juvenile-court-to-consider-assigning-more-cases-to-public-defenders-office/>.

<sup>38</sup> *Id.*

<sup>39</sup> Records were requested for Jan. 1, 2022 through June 30, 2023. Email from Cuyahoga County Juvenile Court to Elana Dean (Aug. 22, 2023) (on file with author); email from Laura Austen to Nikki Baszynski (Aug. 16, 2023) (on file with author).

<sup>40</sup> Appendix D.

<sup>41</sup> Appendix E.

<sup>42</sup> See, e.g., NATIONAL JUVENILE DEFENSE CENTER, NATIONAL JUVENILE DEFENSE STANDARDS (2012), <https://www.defendyouthrights.org/wp-content/uploads/2017/10/National-Juvenile-Defense-Standards.pdf>; CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, TRIAL DEFENSE GUIDELINES: REPRESENTING A CHILD CLIENT FACING A POSSIBLE LIFE SENTENCE (2015), <https://cfsy.org/wp-content/uploads/>

[Trial-Defense-Guidelines-Representing-a-Child-Client-Facing-a-Possible-Life-Sentence.pdf](#)

- <sup>43</sup> Ohio Admin. Code § 120-1-10(A)(3).
- <sup>44</sup> Zoom interview with Sarah Cigic, Deputy Court Administrator and Chief Legal Counsel, Cuyahoga County Juvenile Court (Sept. 8, 2023).
- <sup>45</sup> *Cuyahoga County Juvenile Court Assigned Counsel Application*, CUYAHOGA COUNTY JUVENILE COURT, [http://juvenile.cuyahogacounty.us/pdf\\_juvenile/en-US/GAL/2023-01-09\\_Assigned\\_Counsel\\_Application.pdf](http://juvenile.cuyahogacounty.us/pdf_juvenile/en-US/GAL/2023-01-09_Assigned_Counsel_Application.pdf) (last visited Dec. 6, 2023); Zoom interview with Sarah Cigic, Deputy Court Administrator and Chief Legal Counsel, Cuyahoga County Juvenile Court (Sept. 8, 2023).
- <sup>46</sup> *Application to Service as Assigned Counsel*, CUYAHOGA COUNTY COURT OF COMMON PLEAS, <https://cp.cuyahogacounty.us/court-information/forms/application-to-serve-as-assigned-counsel/> (last visited Dec. 6, 2023).
- <sup>47</sup> Phone interview with Brian Tocheri, Staff Attorney, Franklin County Court of Common Pleas Division of Domestic Relations and Juvenile Branch (Aug. 25, 2023); Phone interview with Angela Chang, Youth Defense Division Director, Hamilton County Public Defender Youth Defense Division Director (July 19, 2023).
- <sup>48</sup> Zoom interview with Sarah Cigic, Deputy Court Administrator and Chief Legal Counsel, Cuyahoga County Juvenile Court (Sept. 8, 2023).
- <sup>49</sup> Email from Elana Dean to Sarah Cigic on Aug. 17, 2023 (on file with author); email from Cuyahoga County Juvenile Court to Elana Dean (Aug. 22, 2023) (on file with author); email from Nikki Baszynski to Attorney Services, Supreme Court of Ohio. (Aug. 25, 2023) (on file with author).
- <sup>50</sup> Appendix G.
- <sup>51</sup> Appendix F (according to an assessment of the credits listed on their CLE transcript from most recent completed biennium).
- <sup>52</sup> Email from Laura Austen, Deputy Director for Policy & Outreach, Office of the Ohio Public Defender, to Nikki Baszynski (Sept. 23, 2023) (on file with author); *Exceptional Circumstances Exemption*, OFFICE OF THE OHIO PUBLIC DEFENDER, [https://opd.ohio.gov/static/Law%20Library/Training/Attorney%20Qualification%20and%20Exemption%20Guidance/Sept-2023\\_OPD-Exemption-Guidance-and-Form.pdf](https://opd.ohio.gov/static/Law%20Library/Training/Attorney%20Qualification%20and%20Exemption%20Guidance/Sept-2023_OPD-Exemption-Guidance-and-Form.pdf) (last visited 9/17/23).
- <sup>53</sup> Email from Laura Austen, Deputy Director for Policy & Outreach, Office of the Ohio Public Defender, to Nikki Baszynski (Sept. 23, 2023) (email, records, and data analysis on file with author).
- <sup>54</sup> Ohio Admin. Code § 120-1-10.
- <sup>55</sup> See Charlie Gerstein, *Dependent Counsel*, 16 STAN. J. C.R. & C.L. 147, 157-162 (2020).
- <sup>56</sup> David Carroll, *DOJ Finds a Lack of Due Process for Children in Memphis Delinquency Courts*, SIXTH AMENDMENT CENTER, Aug. 20, 2012, [https://sixthamendment.org/doj-finds-a-lack-of-due-process-for-children-in-memphis-delinquency-courts/#\\_ftnref](https://sixthamendment.org/doj-finds-a-lack-of-due-process-for-children-in-memphis-delinquency-courts/#_ftnref) (discussing U.S. Department of Justice Civil Rights Division's Investigation of the Shelby County Juvenile Court).
- <sup>57</sup> AMERICAN BAR ASSOCIATION, TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM (2023).
- <sup>58</sup> See VERA INSTITUTE FOR JUSTICE, IMPROVING PUBLIC DEFENSE SYSTEM: GOOD PRACTICES FOR FEDERAL PANEL ATTORNEYS, at 27 (2003) ("...a rotational appointment system is not only fair to attorneys, it is fair to defendants as a whole, as all panel attorneys will gain roughly equal experience through an equal number of appointments.").
- <sup>59</sup> See *id.* ("Panel attorneys report that a district will be able to attract and maintain better attorneys only if it is scrupulously fair in the appointment process, avoiding the perception or practice of appointing attorneys to individual cases based on friendship or how little case preparation the attorney will do, and thus bill for.").
- <sup>60</sup> This process was confirmed by Sarah Cigic in a Zoom interview on September 8, 2023, and several judicial staff via telephone on November 8, 2023.

- <sup>61</sup> Ohio Admin. Code § 120-1-10(A)(1), (2) (appointments should be distributed as widely as possible “by utilizing a rotary system” and “on rare occasion it may be in the interest of justice for a court to select an individual attorney whose expertise or experience is particularly well suited to a given case or client.”).
- <sup>62</sup> Letter from Cullen Sweeney, Chief Public Defender, Cuyahoga County Public Defender Office, to Hon. Thomas F. O’Malley, Administrative Judge, Cuyahoga County Juvenile Court (Sept. 13, 2022).
- <sup>63</sup> Letter from Cullen Sweeney, Chief Public Defender, Cuyahoga County Public Defender Office, to Hon. Thomas F. O’Malley, Administrative Judge, Cuyahoga County Juvenile Court (Sept. 13, 2022).
- <sup>64</sup> Email from Laura Austen to Nikki Baszynski (Oct. 3, 2023) (email, records, and data analysis on file with author). Using reimbursement records from FY 22 and FY23, we calculated the number of cases each of the requested attorneys received for codes 14- *New Charge (Delinquency)*, 15 - *Violation Proceeding*, 18 - *All Other Juvenile Offenses*, and 21 - *All Contempt Charges or Proceedings (Juvenile)*. The five top-earning attorneys had 313, 240, 167, 149, and 143 reimbursed cases under those codes for those two fiscal years (2045 cases total among those 45 attorneys).
- <sup>65</sup> *Id.*
- <sup>66</sup> Ohio Admin. Code § 120-1-10(A)(1), (2).
- <sup>67</sup> *List of counties in Ohio*, WIKIPEDIA, [https://en.wikipedia.org/wiki/List\\_of\\_counties\\_in\\_Ohio](https://en.wikipedia.org/wiki/List_of_counties_in_Ohio) (last edited Sept. 12, 2023).
- <sup>68</sup> Ohio Admin. Code § 120-1-10(A)(1). The rule allows for judicial input in “rare” cases, but does not permit routine judicial involvement in attorney assignments.
- <sup>69</sup> Phone interview with Rebecca Steele, Juvenile Unit Chief, Franklin County Public Defender Juvenile Unit Chief (Aug. 25, 2023).
- <sup>70</sup> Zoom interview with Cullen Sweeney, Chief Public Defender, Cuyahoga County Public Defender Office, (September 19, 2023).
- <sup>71</sup> *Id.*
- <sup>72</sup> *Id.* (This number is based on billing data from January 2023 through April 2023 from the Ohio Public Defender.).
- <sup>73</sup> *Id.*
- <sup>74</sup> *Id.*
- <sup>75</sup> *Id.*
- <sup>76</sup> Zoom interview with Cullen Sweeney, Chief Public Defender, Cuyahoga County Public Defender Office, (September 19, 2023).
- <sup>77</sup> Appendix D.
- <sup>78</sup> The public defender is in the best position to determine whether, due to conflict or capacity, it cannot take a case. Again, judges should remain separate from this process.
- <sup>79</sup> *Information and Application Instructions for Juvenile Court Appointment Lists*, FRANKLIN COUNTY COURT OF COMMON PLEAS, [https://drj.fccourts.org/uploads/Forms/Appointed\\_Counsel\\_List\\_Application\\_Updated\\_3-25.pdf](https://drj.fccourts.org/uploads/Forms/Appointed_Counsel_List_Application_Updated_3-25.pdf), (“Dates for attorneys are assigned on a random rotating basis through the appointment list database. A new schedule is issued every few months. However, available appointments depend on the number and type of cases set each day and there is no guarantee that an attorney will receive an appointment on any given day.”).
- <sup>80</sup> Phone interview with Angela Chang, Youth Defense Division Director, Hamilton County Public Defender Youth Defense Division Director (July 19, 2023).
- <sup>81</sup> Phone interview with Gina Feller, Chief Magistrate, Montgomery County Juvenile Court (Sept. 19, 2023).
- <sup>82</sup> NATIONAL CENTER FOR STATE COURTS, FELONY INDIGENT DEFENSE ASSIGNMENTS IN CUYAHOGA COUNTY, at 12 (2013), [https://www.fpd-ohn.org/sites/default/files/files/1\\_%20OH%20Cuy%20Co%20Indig%20Def%20Vol%20One%20Draft%20Rpt.pdf](https://www.fpd-ohn.org/sites/default/files/files/1_%20OH%20Cuy%20Co%20Indig%20Def%20Vol%20One%20Draft%20Rpt.pdf).

- <sup>83</sup> *Id.* at 12-13.
- <sup>84</sup> Ohio Admin. Code § 120-1-10(A)(1).
- <sup>85</sup> Interview with Laura Austen, Deputy Director of Policy & Outreach, Office of the Ohio Public Defender, in Columbus, Ohio (July 25, 2023).
- <sup>86</sup> Phone interview with Brian Tocheri, Staff Attorney, Franklin County Court of Common Pleas Division of Domestic Relations and Juvenile Branch (Aug. 25, 2023).
- <sup>87</sup> Phone interview with Angela Chang, Youth Defense Division Director, Hamilton County Public Defender Youth Defense Division Director (July 19, 2023).
- <sup>88</sup> Phone interview with Gina Feller, Chief Magistrate, Montgomery County Juvenile Court (Sept. 19, 2023).
- <sup>89</sup> Zoom interview with Sarah Cigic, Deputy Court Administrator and Chief Legal Counsel, Cuyahoga County Juvenile Court (Sept. 8, 2023); *see also Assigned Counsel/GAL, CUYAHOGA COUNTY JUVENILE COURT*, <http://juvenile.cuyahogacounty.us/en-US/Assigned-Counsel-GAL.aspx> (last visited Dec. 6, 2023).
- <sup>90</sup> Ohio Admin. Code § 120.04(B)(3); *see also State ex rel. Meyers v. Ohio State Lottery Comm'n*, 34 Ohio App. 3d 232, 234 (1986) (“An Ohio Administrative Code section is a further arm, extension, or explanation of statutory intent implementing a statute passed by the General Assembly. It has the force and effect of a statute itself.”).
- <sup>91</sup> Dan Horn, *State Board: Fix Hamilton Co. Public Defenders Office*, THE ENQUIRER, Jan 25, 2015, <https://www.cincinnati.com/story/news/politics/2015/01/25/state-board-fix-hamilton-co-public-defenders-office/22313889/>.
- <sup>92</sup> Appendix B.
- <sup>93</sup> Letter from Cullen Sweeney, Chief Public Defender, Cuyahoga County Public Defender Office, to Hon. Thomas F. O’Malley, Administrative Judge, Cuyahoga County Juvenile Court (Sept. 13, 2022).



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