

NATIONAL JUVENILE JUSTICE NETWORK

WHEN THREE'S A CROWD: HOW FAMILIES CAN CONTRIBUTE TO THEIR CHILD'S DEFENSE

POLICY UPDATE | JUNE 2013

The National Juvenile Defender Center (NJDC) recently released comprehensive new best practice standards for juvenile defense attorneys. The standards were developed over a five-year period under the rubric of the John D. and Catherine T. MacArthur Foundation's Juvenile Indigent Defense Action Network.¹

As efforts increase to improve family engagement in the juvenile justice system, it is important to remain cognizant of the ethical standards for attorneys who represent youth, in order to most effectively and appropriately include family members. Having a clear understanding of the role and obligations of their child's attorney can help parents and other caregivers know how they can be most helpful—and when they should take a step back in order to preserve their child's rights. We highlight below what the national juvenile defense standards say about the relationship between the youth's attorney and the youth's family.²

¹ The Juvenile Indigent Defense Action Network (JIDAN) is part of the John D. and Catherine T. MacArthur Foundation's [Models for Change](http://bit.ly/17TjzzY) initiative. It was launched in 2008 to develop targeted strategies to improve juvenile indigent defense policy and practice. For more information about JIDAN and Models for Change, visit <http://bit.ly/17TjzzY>.

² The information in this policy update is drawn from the *National Juvenile Defense Standards*, National Juvenile Defender Center (2012), <http://bit.ly/12s2Kds>, developed with support from the John D. & Catherine T. MacArthur Foundation's Models for Change initiative.

Standards Governing the Relationship of Juvenile Defense Counsel with their Youthful Clients and the Clients' Family

Attorneys Must Advocate for What a Youth Says He or She Wants—Even When It's Not in the Youth's "Best Interest"

A youth's attorney is ethically obligated to advocate for the youth's stated or expressed interests, as opposed to what the attorney or the youth's parents believe may be the youth's best interests. If the attorney believes that the youth's expressed interests will not further the youth's long-term interests, the attorney should provide the youth with additional information so that he or she can make a fully informed decision. If the client does not change his/her mind, however, the attorney must honor the youth's stated interests. **Standard 1.2.**

Why Parents Should Not Be Present When the Defense Attorney Talks to their Child

A youthful client's private conversations with his or her attorney are confidential (this is known as "attorney-client privilege") and the attorney cannot disclose these conversations to anyone—not even the child's parents. If anyone is present during a conversation between the youth and the attorney—including the youth's parents—then the attorney-client privilege is considered waived and anything discussed is no longer confidential—parents could even be forced to testify against their children. There is no "attorney-parent" or "parent-child" confidentiality privilege. **Standards 2.3 and 2.5.**

Why Parents Should Still Talk to Their Child's Attorney

While attorneys must take special care in communicating with parents due to their confidentiality obligations, the standards encourage attorneys to develop a relationship with their clients' parents to gain a better understanding of their clients. Such a relationship can help counsel understand their clients' potential involvement in other systems, and the resources and services that might be available. The national standards recommend that counsel work with their clients' parents on disposition planning to craft a plan that the parents can and will support. **Standards 2.5 and 6.3.**

Further Information for Parents on the Judicial System

Understanding these limitations regarding the communications between a youth’s attorney and his or her parents can help parents and family members assist their children more effectively.

There are many other sources of information to help parents navigate the juvenile justice system and engage in assisting their children through this process. Some helpful resources include NJJN’s publication “[An Advocate’s Guide to Meaningful Family Partnerships: Tips from the Field](#),”³ and a recent workbook published by the Campaign for Youth Justice, “[Family Comes First: A Workbook to Transform the Justice System by Partnering with Families](#).”⁴

See below for a few organizations that work with and advocate for families with youth involved in the justice system:

- Families & Allies of Virginia’s Youth, <http://www.favyouth.org/>
- Justice for Families, <http://www.justice4families.org/file/Home.html>
- Campaign for Youth Justice Family Resource Center, <http://www.campaignforyouthjustice.org/family-resource-center.html>
- Families and Friends of Louisiana’s Incarcerated Children, <http://www.fflic.org/>
- Families and Friends Organizing for Reform of Juvenile Justice, <http://www.forj-mo.org/>.

³National Juvenile Justice Network, “An Advocate’s Guide to Meaningful Family Partnerships: Tips from the Field” (Washington, DC: June 2010), <http://bit.ly/1alQCvO> .

⁴ Neelum Arya, “Family Comes First: A Workbook to Transform the Justice System by Partnering with Families,” Campaign for Youth Justice (May 2013). An Executive Summary of this publication can be found at: <http://bit.ly/1alQRXz>.