THREE YEARS IN
AND 300 YEARS OUT

Fighting for the Legal Rights of Louisiana’s Incarcerated Youth
For these are all our children. We will all profit by, or pay for whatever they become.

— JAMES BALDWIN
On August 29, 2005, as this report headed to press, Hurricane Katrina battered the Mississippi Gulf Coast and almost totally destroyed New Orleans, Louisiana. The lower parishes of Louisiana were trying to pick up the pieces when Hurricane Rita struck Louisiana’s lower western parishes on September 24, 2005. Rita’s storm surge again flooded New Orleans, adding insult to injury. Housing, schools and entire ways of life were decimated by the storms. Staffs in our office were forced to evacuate. We ran to Houston, Texas; Shreveport and Lake Charles, Louisiana; Portland, Oregon; Atlanta, Georgia; Chicago, Illinois and elsewhere to escape the harm and destruction. As everyone knows, not all of New Orleans’ residents were able to leave the flooded city.

Particularly vulnerable were New Orleans’ children, including approximately 150 youth trapped in detention centers in and around New Orleans. Some of the children were merely accused of committing a delinquent act and hence were guilty of nothing, simply arrested by police. Others were adjudicated delinquent and awaiting placement with the state. All but one child were ostensibly represented by part-time employees hired by the Orleans Indigent Defense Program, the same program — and in some cases the very same lawyer — exposed by the New York Times in 1997 for doing little or nothing to represent clients, merely asking a client to pray prior to receiving a disposition to one of Louisiana’s harsh juvenile prisons. These state-appointed lawyers were the same public defenders discussed in two reports by the American Bar Association’s Juvenile Justice Center in 2000 and 2001 as part of a local and state system that left children systemically undefended, violating the U.S. and Louisiana Constitutions and undermining our system of justice.

The young people abandoned to the flood waters were evacuated and placed in the custody of the Office of Youth Development (OYD). OYD utilized two juvenile prisons and other detention centers to house these youth, but not until days after the storm flooded the cells of the Katrina-trapped children. Secretary Simon Gonsoulin and his staff at OYD, not only provided the first food and water to the evacuated youth but worked hours of overtime locating families and working with JJPL and the juvenile courts to get young people properly placed, reuniting children with their families across the country. The lawyers and advocates who finally visited these young people, who fought to reunite them with their families, were not the public defenders charged with defending them, but a small group of private advocates. The story and statistics in this report may seem dry at points. The issue of a poor child’s 6th Amendment right to counsel has not galvanized the public and spurred policy makers the same way other juvenile justice system reform has.

And yet, the story of the abandoned detention center children, the story of how it is that young people are left so vulnerable and undefended, is the story of why the Post Disposition Project matters to all of us, to our state. From August 2001 until December 2004, the state of Louisiana believed enough in the rights of children to provide a small amount of financial support to defend young people. When the support stopped, JJPL did what it could to continue defending young people in the juvenile justice system, including working with the dedicated staff at OYD.

Katrina and Rita revealed many ugly things about our state, but perhaps most ugly, the storms revealed how our justice system abandoned — literally — our children. The responsibility to defend the liberty of young people against the state (seeking to take that liberty) is not a private volunteer matter. It is the state of Louisiana’s lawful obligation, and Louisiana fails to meet this obligation — abdicating its responsibility. As we struggle to rebuild New Orleans and our state, let us take the opportunity to make sure that the juvenile justice system in Orleans parish is rebuilt with a public defender system that defends our youth and helps build or families and community. We at JJPL look forward to working with everyone that cares about our young people and our city to make this vision a reality.

David Utter, Director
Juvenile Justice Project of Louisiana
“I would give [PDP] an overall A rating as a whole. What did they do well in particular? They excelled at communicating with the client, which really is step one. That’s the first step that breaks down with a lot of public defenders. Two, they communicated and were in touch with the family of the defendant. Three, either by resources or whatever, they were able to provide me with a true social background picture of what’s going on with this kid. Four, they were able to identify service providers in the community, and actually do the legwork of matching them up, getting them there and having something occur. ... JJPL walked people through the process and made sure it happened.”

- JUDGE D.
INTRODUCTION

The Post-Disposition Project (PDP), a project of the Juvenile Justice Project of Louisiana (JJPL), provided post-Disposition defense services to indigent youth incarcerated in Louisiana’s delinquency system. From August 2001 to December 2004, PDP sought to hold Louisiana true to its promise. That is, juvenile courts must continue monitoring youth within their jurisdiction to ensure their health, welfare and rehabilitation. PDP sought to prove that youth are best served close to home in non-correctional environments with community-based treatment. The result: PDP in just three years, through its early release successes, rescued Louisiana’s youth from more than 300 years of incarceration, hence the title of this report. These 300 years amount to a savings to Louisiana of more than $23 million. However, early release is only part of the story and the advocacy.

PDP changed the landscape of juvenile indigent defense representation in Louisiana. This report recounts the creation of PDP, and provides an assessment of PDP’s impact on Louisiana’s juvenile indigent defense delivery system and on the culture of juvenile indigent defense as a whole. Also, PDP met many institutional challenges in its representation, and here makes recommendations for systemic reform to meet those challenges.

LOUISIANA’S JUVENILE JUSTICE SYSTEM

Louisiana Children’s Code Generally

As in all states, Louisiana created distinct juvenile court jurisdiction and procedures for youths accused of crimes, and every day Louisiana juvenile courts and courts exercising juvenile jurisdiction place youth from the age of ten (10) to sixteen (16) years old in juvenile prison. These youth are delinquents — found guilty and adjudicated of criminal offenses. Unlike adults convicted of criminal offenses, courts exercising juvenile jurisdiction maintain supervisory jurisdiction over youth committed under their care. These youth can remain in custody until their 21st birthday.

The responsibility of courts exercising juvenile jurisdiction is broader than in adult criminal cases. The Louisiana Children’s Code mandates that juvenile courts continue monitoring youth within their jurisdiction to ensure their health, welfare and rehabilitation and remain mindful of the needs of the communities which will ultimately receive the youth returned from incarceration. The juvenile court is responsible for ensuring that the juvenile is held in a safe environment and is receiving the kind of care that he should have received if he had not been removed from his family. Once placed in the custody of the Department of Public Safety and Corrections, Office of Youth Development (OYD), youth are in the sole control of OYD. The Court can only make recommendations for treatment. OYD is free to adopt or disregard these recommendations. In most instances, however, OYD follows the recommendations of the Court.

Post-Adjudication Rights of Louisiana Youth

At the conclusion of the adjudication hearing and a finding of delinquency, the judge must enter a disposition. The judge may decide upon probation, recommend group-home placement or place a youth in one of Louisiana's three juvenile prisons. However, unlike adult criminal cases, the judges in Louisiana retain jurisdiction over the youth they place on probation and in custody. Judges exercising juvenile jurisdiction can modify a youth’s disposition at any time while a disposition is in force; a modification can mean a change in placement, a shortening of the duration of a disposition, parole release or outright termination of supervision.

Before PDP, most incarcerated youth had no advocate, other than limited counsel provided by OYD. Virtually all public defenders closed their delinquency cases after disposition, even though Louisiana’s juvenile prisons were notorious for violence, lacked treatment and children retained their right to counsel even after placement. By supporting PDP in its role as defense counsel for incarcerated youth, Louisiana — for the first time at the state level — fulfilled its obligation to provide counsel to youth and families too poor to afford a lawyer. Where possible, PDP litigated to get youths released home by bringing unmet needs, issues of institutional abuse, model behavior and legal errors to the attention of the courts.

Juvenile Justice Reform: History and Hope

From 1998 to 2005, the state of Louisiana completely shifted its juvenile justice policy. Once a system focused
on incarceration and adult-like punishment for youth, Louisiana is becoming an example of systemic juvenile justice reform. Fueled by a broad-based effort, incorporating parents, advocates, judges, service providers, administrators and legislators, Louisiana has moved closer and closer to implementing a measured and effective juvenile justice policy.

**REFORM TIMELINE**

In 1998, the Louisiana Supreme Court established the foundation for a state constitutional right to treatment for incarcerated youth;16

In 1998 JJPL, private plaintiffs and the United States Department of Justice sued the state of Louisiana due to longstanding human rights and constitutional violations stemming from the operation of its juvenile prisons;17

In 1999, Louisiana assumed control of the Tallulah Correctional Center for Youth from its private for-profit contractors;

In May of 2000, JJPL and the United States Department of Justice forced the closure of Wackenhut Corporation’s 275-bed Jena Juvenile Justice Center, marking and end to Louisiana's experiment with for-profit juvenile prisons;

In 2000, as a part of settlement, Louisiana agreed to fund juvenile indigent defense for the first time, appropriating over $1.5 million over a three year period beginning in 2001 to pay for lawyers to represent delinquent youth on appeal and post-disposition challenges to their placement;

In 2001, Louisiana saw the birth of a powerful grassroots parents’ advocacy organization — Families and Friends of Louisiana’s Incarcerated Children (FFLIC). FFLIC members began appearing on commissions and boards, adding — really for the first time — the community’s voice to discussions of law and policy reform related to juvenile justice;

In 2003, Act 1225 — the Juvenile Justice Reform Act of 2003 — became law. Act 1225 was the product of the Louisiana Legislature’s Juvenile Justice Commission. This legislation committed Louisiana to reducing its reliance on juvenile prisons by increasing alternatives to incarceration close to youths’ homes and families;

In 2004, the Governor signed into law legislation that 1) made waiver of counsel for children all but impossible,18 2) allowed courts more discretion in cases requiring mandatory minimum dispositions in secure custody,19 3) set new standards for children when competency is raised in delinquency proceedings,20 and 4) separated the Office of Youth Development from adult corrections;21

On June 2, 2004, the Tallulah juvenile prison, which at one time housed 616 youth and had the capacity to house 700, closed its doors to all youth;

In 2004, the Louisiana Legislature created the Joint Legislative Task Force on Indigent Defense, charged with making recommendations to the legislature in 2005 on how to reform the Louisiana Indigent Defender System.22

In 2004, the Louisiana Supreme Court ruled it unconstitutional to use juvenile adjudications to enhance adult sentences under Louisiana’s Habitual Offender Law.23

In 2005, the Louisiana Office of Youth Development (OYD) released its Strategic Plan for 2006-2011. The plan calls for the transformation of the Jetson Correctional Center for Youth and the Swanson Correctional Center for Youth into “multifaceted facilities,” while investing the savings from this transition into a more comprehensive continuum of care for delinquent youth.24 Simon Gonsoulin, Secretary of OYD wrote, “[OYD] is poised to transform our system from a correctional, custodial model to one that is therapeutic and youth centered.”25

These reforms speak to the enormous opportunity available to children’s advocates.

Louisiana is now operating in a reform environment and is making progress to better its juvenile justice system. However, to maintain these gains and to achieve more reforms, vigilance and perseverance are necessary. Louisiana is not done improving its system of justice for youth, but momentum is in favor of the children and families most impacted by Louisiana’s juvenile justice system.
“We had a kid that set herself on fire. They sent her back to us. Set herself on fire! They sent her back and said she needed 24 hour nursing care because she was still trying to rip the bandages off the burns. The psychiatric hospital sent her back, so I notified them that we couldn’t accommodate a child like that in our facility. A nurse stayed up all night with that child. She was ripping the bandages off of the burns! You’re telling me she doesn’t have a serious psychiatric problem and she’s setting herself on fire? They admitted her originally to River Oaks. They kept her a couple of days, then discharged her, but she had serious physical injuries. Nobody wanted her because you had to have a person watching her 24/7 because she was still trying to injure herself.”

– JUDGE K.
Client Demographics: The Youth Inside

Race and Ethnicity
Incarcerated youth in Louisiana are overwhelmingly African-American and overwhelmingly poor. Of the total youth population in Louisiana, 54% of the children are White, 40% are African-American, and 6% are other ethnicities, including Asian, Latino and American Indian. Despite being only 40% of Louisiana’s total population, as of December 30, 2005 (the latest data available), approximately 79% of all youth in custody were African-American, while approximately 19% were White.

According to Reducing Juvenile Incarceration in Louisiana, a report prepared by the Annie E. Casey Foundation Casey Strategic Consulting Group for the Joint Legislative Juvenile Justice Commission in February 2003, African-American youth are four times more likely to be incarcerated than White youth. Further, only 33% of the African-American youth in custody were in non-secure placements as compared to 43% of White youth. Even when controlling for offense severity and history, African-American youth receive longer dispositions than white youth. Equally disturbing, African-American youth are less likely to achieve early release and serve more time in secure care than White youth.

PDP’s clients reflect these same disparities. According to case data, from August 2001 through December 2004, 76% of PDP’s clients were African-American, 23% were White and one percent was other ethnicities, including Asian, Latino and Native American children.

Education
Educational success is one of the strongest indicators of long-term success for youth. Academically successful youth are more likely to avoid the juvenile justice system, go on to higher education and attain gainful employment. Louisiana ranks 46th in the nation in percentage of citizens 25 years old or older who have graduated high school or its equivalent. PDP’s clients — children in juvenile prison — have pronounced educational deficits. Of the 433 youth currently in juvenile prison, only 25 have a Graduate Equivalency Diploma (GED) while 201 youth in custody (46%) are receiving special education services.

Mental Health Care
Mental health is a strong indicator of the well-being of Louisiana’s children. Depression is a common underdiagnosed condition found in young people, leading to serious problems with families and social development. Other emotional and behavioral conditions can also result in temporary impairments of social, academic and personal care skills in adolescents. These impairments are manifest in confused thinking, hyperactivity, anxiety, aggressiveness, sleep disturbances or eating disorders, among other symptoms. As a consequence of inadequate mental health services in the community, judges often use juvenile prison as a means of delivering mental health services to needy children. The tragedy is these prisons are the least effective and most expensive way of delivering such services.

Exposure to violence and trauma play a major role in the mental and emotional well being of children in Louisiana’s juvenile justice system. Youth and families in Louisiana’s juvenile justice system are often exposed to high levels of trauma, causing lasting psychological, emotional and physical scars. Delinquency is frequently related to physical, sexual and emotional abuse, neglect, loss and/or exposure to violence, interfering with cognitive, identity and moral development. Statewide, 13,546 children were abused and/or neglected and 4,353 children were placed in foster care. Louisiana ranks 46th in the nation (fourth worst) for the rate of teen deaths by accident, homicide or suicide (71 deaths per 100,000 teens aged 15-19). This reality highlights the importance of providing safe secure care environments so as not to continue to traumatize children in state’s custody. Moreover, the risk of violent death among youth who have been incarcerated previously is 76 times greater than that of the general population.

PDP discovered smart interventions and advocacy in the lives of at-risk youth and families can reclaim a valuable resource — youth and families — providing a rippling benefit throughout the state. In the other direction, if Louisiana fails to effectively reform its juvenile justice system and neglects to provide smart interventions and advocacy within a therapeutic system, then Louisiana’s youth — and their families — lose opportunity, becoming burdens on a hopeless system.

ORIGIN OF THE POST-DISPOSITION PROJECT

History of JJPL
PDP was a project of JJPL, a statewide nonprofit advocacy organization dedicated to reforming Louisiana’s broken juvenile justice system. JJPL’s mission is to transform the juvenile justice system into one that builds on
“I got shot ... three times in my leg. They wasn’t really meant for me. I was there when shooting went down and a few bullets caught me. ... It crushed one of my bones and they took two of them out of my leg I think. I got some type of metal in there.”

-T.S, PDP CLIENT
the strengths of young people, families and communities to ensure children are given the greatest opportunities to grow and thrive. Since 1997, when JJPL first opened its doors, JJPL has worked to reform Louisiana's juvenile justice system by improving conditions and treatment for incarcerated youth, improving legal advocacy for indigent youth accused and adjudicated of crimes and expanding community-based alternatives to incarceration.

At the time JJPL began its work, youth were incarcerated in huge institutions which violated both international human rights standards and the federal constitution. 77% of these youth were locked up for non-violent offenses. JJPL’s initial focus was improving juvenile prison conditions, rescuing youth from imminent and irreparable harm. So in July of 1998, JJPL filed a lawsuit challenging the brutal conditions of confinement in Louisiana's juvenile prisons.

While investigating the brutal conditions in Louisiana's juvenile prisons, JJPL discovered almost no one represented youth after they were placed in the custody of OYD. Constitutionally, incarcerated youth retained their right to representation throughout all phases of the delinquency process — including post-disposition. However, incarcerated youth had nowhere to turn for resolution of their innocence claims, to fight for their early release, to argue for more appropriate placement or correct legal error in their adjudications and dispositions. Without retained (paid) counsel, incarcerated youth were at the whim of the flawed institutions operating within a flawed system. Few, if any, of the youth adjudicated delinquent received effective representation, and the incidence of waiving counsel for juveniles was as high as 95% in some parishes. In addition, youth with counsel were ineffectively represented due to other factors, including crushing caseloads and a lack of training for the lawyers.

**Post-Disposition Project: Product of Settlement**

On October 3, 2000, JJPL, the State of Louisiana and the Department of Justice (DOJ) settled the lawsuits pending against Louisiana's juvenile prisons. As a part of settlement, Louisiana agreed to appropriate over $1.5 million to the Louisiana Indigent Defense Assistance Board (LIDAB) over three years to provide youth with post-disposition and appellate representation. In turn, LIDAB tapped JJPL to provide representation to Louisiana's incarcerated youth and youth requesting an appeal of their adjudication or disposition. JJPL responded by creating PDP, as a project of JJPL. PDP launched in August 2001, becoming the first and only state-wide, state-funded defender project dedicated exclusively to representing youth. PDP was born — a product of settlement.

**Post-Disposition Project: Mission**

PDP’s mission was to provide quality legal representation to youth incarcerated in Louisiana's juvenile prisons by adhering to the highest professional standards and best practices to protect youth’s constitutional rights to ensure they received the treatment and rehabilitation to which they were entitled. PDP targeted youth who were better served in a less restrictive setting — preferably in their own homes and communities. Recognizing the paltry social services available for youth in this state, PDP — through the education of judges, prosecutors, defense attorneys, probation officers, and others involved in the system — worked to build a consensus for community-based programs for Louisiana youth and demonstrated the need for a shift in public policy from the over-use of incarceration. PDP endeavored to be a model of juvenile representation for Louisiana, pushing Louisiana toward a just system of delivery of juvenile indigent defense services and a more effective system of juvenile rehabilitation.

**PDP 7 GOALS**

PDP kept in mind seven (7) goals to keep the project true to its mission:

Professionally and successfully advocate for youth’s release from incarceration and demonstrate greater opportunities for successful life outcomes.

Provide a voice to incarcerated youth, their families, and their communities in their efforts for better opportunities and treatment.

Create value in effective representation and advocacy for youth.

Educate individuals and groups both within and outside the juvenile justice system of their value in effective representation and advocacy for youth.

Educate individuals and groups both within and outside the juvenile justice system of the value and effectiveness of community-based alternatives to incarceration.
“Guards beat up kids every day; they curse at you every day.”

– M.C., PDP CLIENT.
Develop a comprehensive understanding of the community services available in Louisiana and work toward increasing the quality and quantity of programs. Prove, through ongoing evaluation and quality assurance, the value and importance of effective representation and advocacy for youth.

**Post-Disposition Project: Structure**

The structure of PDP was based on a collaborative and more holistic model of legal representation. PDP’s vision of representation was consistent with the vision later articulated in the Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems (Ten Principles). PDP sought “to provide appropriate support, resources, opportunities, and treatment to assure the rehabilitation and development of competencies for children found delinquent.” All PDP clients arrived by referral. Incarcerated youth, or someone acting on their behalf or in their interest, phoned JJPL seeking legal assistance. Once a child’s referral was opened as an active case, the PDP Attorney and Youth Advocate worked together to prepare incarcerated youth for successful transitions from custody to community.

**The Role of the Post-Disposition Project Lawyer**

PDP at its core was a project of legal representation. As a consequence, the primary role of the PDP attorney was to zealously represent the youth in post-disposition proceedings. In addition, the PDP attorney was expected to maintain a continuing duty to the youth, a duty broader than that applicable to criminal defense attorneys. The PDP attorney counseled and rendered or assisted in securing appropriate legal services for the client in matters arising from the original delinquency proceedings and maintained contact to ensure the protection of the youth’s rights so long as the client remained under juvenile court jurisdiction.

**Role of the Youth Advocate**

As a part of the legal team, the Youth Advocate connected with the youth, the youth’s family and the youth’s community. The Youth Advocate made the youth three dimensional, pulling together life, family and court histories, in order to craft a plan for the youth’s successful release from juvenile prison. The Youth Advocate had primary responsibility for the after-care plan. The Youth Advocate was expected to work with the youth to succeed where other interventions failed. That is, the youth — through the Youth Advocate — was given primary authorship over her plan for re-entry. PDP operated under the premise that youth were not powerless to articulate the interventions and supports they needed to succeed. The Youth Advocate was the manifestation of this belief, and was called upon to receive the aspirations of incarcerated youth, translating those aspirations into plans for success.

**IMPACT OF POST-DISPOSITION ADVOCACY**

The empirical and anecdotal data from PDP make clear the need to have counsel dedicated to incarcerated youth. No justice system is perfect, yet the power the justice system wields over individual lives is colossal. When one couples this ability to either turn around the lives of wayward youth or further damage young people already deeply abused and troubled, the need for competent, well resourced and zealous advocacy is manifest. PDP changed youths’ lives and Louisiana’s defense practice.

**Motions to Modify Disposition**

Juvenile court has continuing jurisdiction to modify dispositions in all cases except where the adjudication is based upon first degree murder, second degree murder, aggravated rape, aggravated kidnapping or armed robbery. The juvenile court has the ability to change a child’s legal custody, suspend all or part of any order of commitment, discharge any conditions of probation, or add any further condition authorized by law. The decision to modify a child’s disposition is up to the judge (discretionary), and a request “may be denied without a hearing.” At the same time, the judge cannot abuse his or her discretion. A majority of court’s exercising juvenile jurisdiction and the Louisiana Legislature have endorsed — through a series of resolutions — a preference toward conducting regular reviews of juvenile cases and consideration of modification in the course of a hearing.

To prevail on Motions to Modify Disposition, PDP staff produced facts evidencing a change in circumstances or conditions relevant to the youth’s continued effective treatment or rehabilitation — facts not confronted by the juvenile court at the time of the initial disposition. Generally, where the changed circumstances or conditions were relevant to the continued effective treatment or rehabilitation of the youth, a hearing was held to explore those circumstances and conditions. Training and practice made PDP successful in its motions
seeking modifications of disposition over 74% of the time. Motions to Modify Disposition were based on many factors, including abuse, lack of treatment and inappropriate placement. Modification hearings are also a forum for courts to intervene and order broad relief — relief exceeding the usual early release or termination. Motions to Modify Disposition represented the majority of PDP’s legal work. 80% of the substantive motions filed by PDP between 2001 and 2004 were Motions to Modify Disposition.

Motions other than Motions to Modify Disposition and Appeals were considered “Extraordinary Motions.” Generally, these motions were extraordinary for two reasons. First, insofar as litigation is concerned, these motions tended to be more complex in theory and strategy than motions to modify disposition. Second, these motions were relatively rare. Again, most PDP motions sought modification. However, as counsel, PDP staff was not allowed to ignore legal errors.

At bottom, all PDP motions sought some sort of modification of the youth’s legal status. What separated Extraordinary Motions was the focus on correcting legal error and the minimal reliance on the client’s record in juvenile prison. These types of motions had the greatest potential for dramatic relief for youth represented by PDP. In addition, many times Extraordinary Motions gave courts greater authority to intervene positively in the lives of the youth. For example, Motions to Correct Sentence oftentimes resulted in immediate release for youth or significant reductions in the length of incarceration.

Whether through a Motion to Modify Disposition or some other “extraordinary” motion, PDP provided hope to youth. Youth represented by PDP believed they had as good a chance as anyone in court. Equally important, PDP sought to provide education to judges, public defenders and institutional personnel. PDP believed zealous advocacy and single-minded focus would result in more skilled institutional personnel by challenging them to learn and do more.

Appellate Review

PDP also provided appellate representation for youth around Louisiana. Unlike the rest of the project, appellate representation was open to youth not in juvenile prison as well as those youth incarcerated. Prior to PDP, no coordinated appellate representation existed for youth in Louisiana.

PDP’s appellate representation was important for at least two reasons. First, the process of appellate review is the first and fastest avenue to

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<tr>
<th>DISPOSITIVE MOTIONS SUMMARY</th>
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<tbody>
<tr>
<td><strong>Emergency Release Motions</strong></td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
</tr>
<tr>
<td>Denied</td>
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<td>Granted</td>
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<tr>
<td><strong>Sum</strong></td>
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<tr>
<td><strong>Motion for Furlough Consideration</strong></td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
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<tr>
<td>Denied</td>
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<td><strong>Sum</strong></td>
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<tr>
<td><strong>Motion for Rehearing of Motion to Modify</strong></td>
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<tr>
<td><strong>Outcome</strong></td>
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<tr>
<td>Denied</td>
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<td><strong>Sum</strong></td>
</tr>
<tr>
<td><strong>Motion for Review and Release</strong></td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
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<tr>
<td>Granted</td>
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<tr>
<td><strong>Sum</strong></td>
</tr>
<tr>
<td><strong>Motion to Amend Disposition</strong></td>
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<tr>
<td><strong>Outcome</strong></td>
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<td>Denied</td>
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<td>Granted</td>
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<tr>
<td><strong>Sum</strong></td>
</tr>
<tr>
<td><strong>Motion to Correct Illegal Sentence</strong></td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
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<tr>
<td>Denied</td>
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<td>Granted</td>
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<td><strong>Sum</strong></td>
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<tr>
<td><strong>Motion to Enroll as Counsel</strong></td>
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<td><strong>Outcome</strong></td>
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<td>Denied</td>
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<td><strong>Sum</strong></td>
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<tr>
<td><strong>Motion to Reconsider Probation</strong></td>
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<tr>
<td><strong>Outcome</strong></td>
</tr>
<tr>
<td>Denied</td>
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<tr>
<td><strong>Sum</strong></td>
</tr>
<tr>
<td><strong>Motion to Terminate Disposition</strong></td>
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<td><strong>Outcome</strong></td>
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<td>Denied</td>
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<td>Granted</td>
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<tr>
<td><strong>Sum</strong></td>
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<tr>
<td><strong>Motion to Transfer to Non-Secure Custody</strong></td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
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<tr>
<td>Granted</td>
</tr>
<tr>
<td><strong>Sum</strong></td>
</tr>
<tr>
<td><strong>Motion to Vacate Adjudication</strong></td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
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<tr>
<td>Granted</td>
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<td>Withdrawn</td>
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<td><strong>Sum</strong></td>
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<td><strong>Motion to Vacate Disposition</strong></td>
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<td><strong>Outcome</strong></td>
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<td>Withdrawn</td>
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<td><strong>Sum</strong></td>
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<tr>
<td><strong>Notice of Intention to Apply for Writs</strong></td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
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<td>Granted</td>
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<tr>
<td>Withdrawn</td>
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<tr>
<td><strong>Sum</strong></td>
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<tr>
<td><strong>Petition for Judicial Commitment/MH Placement, Tx</strong></td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
</tr>
<tr>
<td>Granted</td>
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<tr>
<td><strong>Sum</strong></td>
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<tr>
<td><strong>Post-Conviction Petition</strong></td>
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<td><strong>Outcome</strong></td>
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<td>Denied</td>
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<tr>
<td><strong>Sum</strong></td>
</tr>
<tr>
<td><strong>Release Order</strong></td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
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<tr>
<td>Granted</td>
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<td><strong>Sum</strong></td>
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**Total Dispositive Motions Filed** 690

“Extraordinary Motions”
“How you finish something makes or breaks it. If you play three quarters of great football and in the last quarter you play terrible, you can lose the game. That’s PDP. You’ve got to finish the post-dispositional, the modification and the reintegration. If you don’t finish then anything good that happened up front has been wasted.”

- S.D., PUBLIC DEFENDER
correct errors in proceedings. As a lesson to youth, it allows youth to have their proceedings reviewed by a higher and neutral authority, engendering greater trust in the judicial system and strengthening a belief in fairness. Second, the appellate process is an opportunity to gain clarity for legal practitioners and institutional personnel. The process of appellate decision making — through the issuance of legal opinions and orders — clarifies ambiguous laws, rules and procedures. For example, appeals filed by PDP have resulted in reversals of adjudications and dispositions, required the release of youth seeking modification and forced juvenile courts to open their courtrooms to press and community when the youth and family request the support and presence of their community.

A New Culture of Defense
With an emphasis on best practices, training and zealous thorough advocacy, PDP represented a complete change from what most courts were used to witnessing in their courtrooms. Moreover, PDP illustrated what was possible for representation in Louisiana.

Louisiana’s history of poor representation, particularly for youth, is well-documented. PDP was an attempt to show Louisiana it could do better. That is, Louisiana could provide good quality representation for indigent youth.

Quantitatively, PDP proved successful in much of its advocacy. From 2001 through 2004, PDP’s advocacy resulted in the early release of 300 youth, saving an average of 15 months on each youth’s disposition and an aggregate total of more than 3800 months of incarceration. In this same period, PDP filed nearly 800 different motions on behalf of incarcerated youth, including 203 successful Motions to Modify Disposition. PDP was successful in 75% of these Motions.

PDP was also successful in the rest of its post-disposition advocacy, specifically in the area of error correction. For example, PDP prevailed in 13 of 14 “Motions to Correct Illegal Sentence,” a success rate of 93%.

INSTITUTIONAL CHALLENGES TO PDP

Juvenile Court Administration
One of the biggest sources of frustration for PDP staff was the juvenile court administrative system itself. Most courts throughout Louisiana were not equipped to sustain real representation for youth. Many times prior to a hearing, attorneys and advocates discovered witness subpoenas were not issued or unilaterally cancelled by courts, cancelled despite the fact courts have no authority to do so. It was no less daunting to secure records necessary to represent youth in court. While Louisiana law mandates defense counsel access to information such as institutional information and court records, many courts and the juvenile prisons themselves were unfamiliar with the law and reflexively deny counsel access to such records, citing confidentiality.

In addition to the difficulties in securing witnesses and records were the difficulties in getting many courts to take action on motions filed on behalf of PDP clients. Many motions were lost, forgotten or simply ignored. In one case, appellate review for a PDP client was hindered simply because the court failed to act on the client’s Notice of Intent to Seek Writs. These institutional barriers stem from the perception of juvenile court as a lesser court. As a consequence, little attention was given to processes that enhance the timely and accurate resolution of juvenile cases.

A Broken Indigent Defense System
Ideally, PDP would simply be a section in the juvenile division of Louisiana’s public defenders’ offices, offices dedicated to quality juvenile representation for indigent youth. This is not the case. Even after the American Bar Association found Louisiana woefully deficient in its delivery of juvenile indigent defense services, Louisiana’s political leadership refuses to reform its broken juvenile indigent defense system, relying instead on the courts to craft solutions borne out of lawsuits and challenges by defendants.

Louisiana’s broken indigent defense system is a barrier to PDP in a few ways. First, it breeds legal error, causing the unnecessary or excessive incarceration of youth in juvenile prison. Discovering and litigating these errors increased the substantive work of PDP staff as they sought to correct them. Second, the structural unpredictability made regular cooperation with local public defenders almost impossible. On more than one occasion, PDP appeared at hearings to find public defenders advocating against their client’s interest. Moreover, because PDP wasn’t a part of the local structure, PDP’s presence was immediately suspect to the court and court personnel.

Geography
PDP covered the entire state of Louisiana. This meant long drives for home visits, court files and institutional interviews. With only six mobile full-time staff based in New Orleans, burnout quickly became an issue. Over its three-year lifespan, PDP employed 16 different people on a full or part-time basis to meet the needs of the youth in juvenile prison around Louisiana.

Beyond burnout, the size of Louisiana and the size of Louisiana's juvenile prison population conspired to make the work labor-intensive and time-consuming. This meant bottlenecks for resolving some cases, particularly cases in remote regions of Louisiana. The sprawling nature of the work created increased liability and danger for staff. The work required many hours spent away from family and friends.

**Interventions, Alternatives and Competence**

Currently, Louisiana is trying to transform its juvenile prison culture into a juvenile treatment culture. PDP staff experienced first-hand the need for more community-based services and incarceration alternatives. With its orientation toward incarceration as a means of treating delinquency, Louisiana sorely lacked competent alternatives and interventions for youth in the delinquency system, alternatives PDP was duty-bound to find for youth seeking early release.

Louisiana's lack of youth prison alternatives is well-documented, despite research indicating prison alternatives are more cost-effective and better at curbing youth crime while ensuring the success of youth released from juvenile prison. This paucity of services, especially transition services, translated into frustration for PDP staff who were forced to piece together aftercare plans for youth who desperately needed connections to education, housing, mental health care and employment.

**The Need for Systemic Representation Reform**

**Lessons Learned: Evaluating The Post-Disposition Project**

In any project assessment the question must be asked, “so what?” PDP is no exception. This report puts it this way: What difference did PDP's representation make in the lives of individual clients and in changing the landscape of juvenile justice broadly?

Insofar as early release was concerned, PDP staff achieved early release in the vast majority of cases it accepted for representation. PDP Motions to Modify Disposition were granted 75% of the time. This success was not attributable to PDP's case selection process. PDP was not in the business of picking “easy” cases. One prosecutor wondered why PDP brought so many different youth to court seeking early release and other relief, stating, “I'm sure there's a kid in Livingston Parish in jail for theft of goods who deserves [PDP's] help.”

PDP was successful in educating groups and individuals mainly through the actual representation of youth and conducting trainings. However, the broad goal of increasing the quality and quantity of programs for youth only happened as a collateral consequence of PDP's work. That is, the knowledge and expertise of PDP staff was disseminated to others within JJPL and in many instances PDP directly participated in specific initiatives, providing fuel to the fires of reform without actively participating in any broad reform effort.

In sum, PDP had great impact on the culture of representation for youth, while having only marginal impact on developing Louisiana's juvenile justice system's capacity to care for its youth. At the same time, without PDP's advocacy, Louisiana would spend millions of extra dollars on holding youth in prison who are erroneously held or could be safely placed in their communities.

**Recommendations**

PDP believed that intervention by passionate advocates, trained in the law and versed in principles of adolescent development, could make a difference in the lives of youth in Louisiana's delinquency system. However, advocacy wasn't enough. Louisiana lacks the transformative and effective programs children in the juvenile justice system need to thrive. Without more comprehensive reform in Louisiana's juvenile justice system — specifically in the provision of quality programming — PDP was only able to persuasively illustrate the potential and needs of clients with no access to the tools to nurture that same potential. Based on its work and experience, JJPL and PDP offer these recommendations for reform:

Envision juvenile delinquency representation along a continuum from pre-trial to community reintegration, wherein post-disposition representation is a part of a coordinated and integrated system of delivery of juvenile defense services.
“I called JJPL in September, October, 2001, around that time. ... Oh man, I say if it wasn’t for PDP, I would have done all my time up there. Melissa ain’t had to ask for me to talk to her, she didn’t have to be concerned, and by me being locked up for so long, she could have been like he ain’t got nothing but a year left, just let him ride that year out. If it wasn’t for PDP, I probably would have done my last year. They done what they needed to do.

If you don’t know nobody or you ain’t got people that can hook you up with jobs or whatever, you’re out. Now, I just need me a job and I need me a for sure spot where I can get out of that project. Get out of the project and get me nice paying job, I’d be good. I want to be in a nice comfortable house, in a nice neighborhood, with a nice paying job, that’s what I want right there.”

- T.S., PDP Client.
Increase the resources available to support representation of juveniles in delinquency proceedings, and improve the quality of representation of juveniles in delinquency proceedings in order to ensure effective assistance of counsel.

Develop a strong community-based service network (CBSN) across the state for youth which holds service providers accountable and demands quality service to provide effective rehabilitation.

Coordinate and integrate all Louisiana agencies serving youth, allowing flexibility in the treatment of delinquency — it’s not just OYD’s problem.

Narrow judicial authority to deny OYD’s decision to modify a youth’s disposition to a less restrictive environment. Once the results of reform are manifest — meaning OYD is more Missouri-like with improved programming and confidence from the judiciary — OYD should be able to modify youth without court approval in most instances.

CONCLUSION

PDP provided much-needed representation for a forgotten few. Louisiana’s incarcerated youth face many challenges, not the least of which is navigating the sometimes confusing terrain of juvenile justice. While Louisiana’s juvenile prison population has steadily declined since the beginning of PDP, partly due to PDP’s success and other reform efforts implemented by the state and other activists, this change does not obviate the need for post-disposition representation. Louisiana needs to continue its commitment to fairness and equality in the administration of justice and rehabilitation of youth by improving the quality of representation and advocacy for youth in the juvenile justice system.
Corrections, Office of Youth Development (OYD). are in the custody of the Department of Public Safety and (JCY) in Baton Rouge, LA. While in juvenile prison, youth are in the custody of the Department of Public Safety and Corrections, Office of Youth Development (OYD).

endnotes


3 The Louisiana Children’s Code is the statutory authority that spells out the ways in which young people may be brought under the umbrella of the “juvenile justice system.” If the child is at least ten and under seventeen years of age and commits or is suspected of committing an offense that would be illegal if she were an adult, she will likely be handled in the delinquency system.

4 This calculation represents 300 years multiplied by the average cost to Louisiana per day per youth ($215.50) to house a youth in juvenile prison. See Department of Public Safety and Corrections, Office of Youth Development, Fiscal Year 2004 Report to the Governor’s office of Planning and Budget.


6 Louisiana Children’s Code Article 302 reads:

(1) Special juvenile courts created by law for Caddo, Orleans, Jefferson, and East Baton Rouge Parishes shall have exclusive original juvenile jurisdiction, and any other jurisdiction conferred by the statute creating them, in the parish or parishes for which they are created. Judges of these courts shall exercise their juvenile jurisdiction according to the provisions of this Code.

(2) District courts, except where a separate juvenile court with exclusive original juvenile jurisdiction is established by law, shall have original juvenile jurisdiction for the parish or parishes within their district.

(3) Parish courts, except where a separate juvenile court with exclusive original juvenile jurisdiction is established by law, shall have original juvenile jurisdiction for their parish. This jurisdiction shall be concurrent with that of the district court.

(4) City courts, except where a separate juvenile court with exclusive original juvenile jurisdiction is established by law, shall have original juvenile jurisdiction for their territorial jurisdiction. This jurisdiction shall be concurrent with that of the district court.

7 Louisiana’s three juvenile prisons are Swanson Center for Youth (SCY) in Monroe, LA; Bridge City Center for Youth (BCCY) in Bridge City, LA; and Jetson Center for Youth (JCV) in Baton Rouge, LA. While in juvenile prison, youth are in the custody of the Department of Public Safety and Corrections, Office of Youth Development (OYD).

8 “Delinquent act’ means an act committed by a child of ten years of age or older which if committed by an adult is designated an offense under the statutes or ordinances of this state, or of another state if the act occurred in another state, or under federal law, except traffic violations. It includes a direct contempt of court committed by a child.” See La. Ch.C. art. 804 (3) (West 2005).

9 See La. Ch.C. art. 909 et seq.

10 Louisiana Children’s Code Article 102 reads:

The provisions of this Code shall be liberally construed to the end that each child and parent coming within the jurisdiction of the court shall be accorded due process and that each child shall receive, preferably in his own home, the care, guidance, and control that will be conducive to his welfare. In those instances when he is removed from the control of his parents, the court shall secure for him care as nearly possible equivalent to that which the parents should have given him. These Code provisions shall be construed to promote the stability of the family and to secure simplicity in procedure, fairness in adjudication and administration, and the elimination of unjustifiable delay.

11 Louisiana Children’s Code Article 901 reads, in relevant part:

A. In considering dispositional options, the court shall not remove a child from the custody of his parents unless his welfare or the safety and protection of the public cannot, in the opinion of the court, be adequately safeguarded without such removal.

B. The court should impose the least restrictive disposition authorized by Articles 897 through 900 of this Title which the court finds is consistent with the circumstances of the case, the needs of the child, and the best interest of society.


13 State in the Interest of T.A. 00-2560 (La. 12/07/01), 801 So.2d 351; see also, State in the Interest of Sapia, 397 So.2d 469 (La. 1981).

14 See La. Ch.C. art. 892.

15 See La. Ch.C. art. 803 (A) (At every stage of proceedings ... the accused child shall be entitled to counsel).

16 In Re: C.B., 708 So. 2d 391 (La. 1998).

17 Brian B., et al v. Stalder, et al., CA No.98-886-B-M1 (M.D. La. 1998). JJPL’s legal action was consolidated with two other legal actions — Williams v. McKeithen, No. 71-98-B (M.D. La. 1971) and United States v. Louisiana, No. 98-947-B-1 (M.D. La. 1998) — involving the conditions of confinement in all of the state’s juvenile prisons. JJP was appointed co-counsel in Williams, a class action initiated by a Baton Rouge law firm, making JJPL co-counsel for all of Louisiana’s incarcerated youth.


22 See Senate Concurrent Resolution No. 136, Louisiana Legislature 2004 Regular Session; Note 2, supra.

23 See State v. Brown, 03-2788 (La. 07/06/04), 879 So. 2d 1276. The Court wrote, “Because a juvenile adjudication is not established through a procedure guaranteeing a jury trial, it cannot be excepted from Apprendi’s general rule; the use of these adjudications to increase the penalty beyond the statutory maximum violates the defendant’s Due Process right guaranteed by the Fourteenth Amendment of the United States Constitution.” State v. Brown, 03-2788 (La. 07/06/04), 879 So.2d at 1290.

24 State of Louisiana Office of Youth Development, Youth Services Strategic Plan 2006-2011, p. 7

25 Id. at p. 12.


29 See Reducing Juvenile Incarceration in Louisiana, prepared by the Annie E. Casey Foundation, Casey Strategic Consulting Group for the Joint Legislative Juvenile Justice Commission, February 2003, p. 32.

30 Id. at 34-35.

31 Id. at 36-37.

49 See Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems, American Bar Association National Juvenile Defender Center and American Council of Chief Defenders (ACCD), a section of the National Legal Aid and Defender Association (NLADA). The ACCD officially adopted the Ten Principles on December 4, 2004 in Washington, D.C.


51 Louisiana Children’s Code article 909 reads:

Except as provided for in Article 8971, after the entry of any order of disposition, the court retains the power to modify it, including changing the child’s legal custody, suspending all or part of any order of commitment, discharging condition of probation, or adding any further condition authorized by Article 897 (B) or 899 (B). It may also terminate an order of disposition at any time while it is still in force.

Louisiana Children’s Code article 8971 reads, in relevant part:

A. After adjudication of a felony-grade delinquent act based upon a violation of R.S. 14:30, first degree murder; R.S. 14:30:1, second degree murder; R.S. 14:42, aggravation rape; or R.S. 14:44, aggravated kidnapping, the court shall commit the child who is fourteen years or older at the time of the commission of the offense to the custody of the Department of Public Safety and Corrections to be confined in secure placement until the child attains the age of twenty-one years without benefit of parole, probation, suspension of imposition or execution of sentence, or modification.

B. After adjudication of a felony-grade delinquent act based upon a violation of R.S. 14:64, armed robbery, the court shall commit the child who is fourteen years or older at the time of the commission of the offense to the custody of the Department of Public Safety and Corrections to be confined in secure placement for the length of the term imposed by the court at the disposition hearing without benefit of parole, probation, suspension of imposition or execution of sentence, or modification.

52 See La. Ch.C. art. 909.

53 See La. Ch.C. art. 910 (B).

54 The courts are charged with the responsibility to maintain the health, welfare and rehabilitation of youth under their jurisdiction. Courts shrinking from this duty run the risk of abusing their discretion. See State in the Interest of C.H., 03-1279 (La.App. 3 Cir, 01/28/04), 865 So. 2d 947, 950 (trial court abused its discretion in denying C.H.’s motion to modify disposition).


56 See State in the Interest of S.D., 2002-0672 (La.App. 4th Cir. 11/21/02), 832 So.2d 415 (juvenile court did not abuse its discretion by finding the juvenile prison violated S.D.’s constitutional rights).

57 Technically speaking, Extraordinary Motions were based almost purely on legal arguments. However, the conduct of the youth while in juvenile prison did not go unnoticed by courts.

58 PDP provided appeal and writ support, but this report will refer to both as appeals.

59 State in the Interest of Q.U.O., 39,303 (La. App. 2 Cir. 10/27/04), 886 So. 2d 1188.

60 State in the Interest of C.H., 03-1279 (La.App. 3 Cir, 01/28/04), 865 So. 2d 947.

61 See State In the Interest of D.W., 03-2754 (La. 01/30/04), 865 So.2d 45. (a youth and his family were allowed to have a public hearing — allowing community and press to be present — where it was alleged guards abused youth in juvenile prison).


63 See La. C.Cr. P. art. 731 (A). The issuance of subpoenas is non-discretionary. Courts must issue subpoenas when requested.


65 See State in the Interest of C.J., Case no.: 3191.

66 See Note 29, supra. Louisiana was again criticizing for its delivery of indigent defense services. The National Legal Aid and Defender Association found Louisiana “in direct violation of the state and federal constitutions, Louisiana government (both state and local) has constructed a disparate system that fosters
systemic ineffective assistance of counsel due primarily to inadequate funding and a lack of independence from undue political interference.” National Legal Aid & Defender Association, In Defense of Public Access to Justice, March 2004 at p iii.


71 Fortunately, as PDP closed its doors, the Youth Empowerment Project (YEP) raised its banner. Founded by original PDP staff, YEP provides aftercare and re-entry case management services to youth exiting Louisiana’s juvenile prisons.
ACKNOWLEDGEMENTS

This report would not have been possible without the involvement of some remarkable juvenile advocates who accept the challenge of representing incarcerated children every day. In addition, the Juvenile Justice Project of Louisiana (JJPL) is thankful to the numerous other people working in Louisiana’s juvenile justice system who graciously agreed to share their personal views through interviews.

JJPL is especially indebted to our children, our clients. These young men and women told their stories and allowed us a window into their lives in an effort to influence the lives of others.

We are also thankful to the hard work of those individuals who assisted with editing and revising this report. A special thanks is necessary to Russell Estes at the Southern Poverty Law Center for his graphical genius; Gabriella Celeste, who first began to write this report; and Brice White, who traveled Louisiana to gather the stories of children and advocates.

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Sincerely,

[Signature]

Derwyn D. Bunton, Associate Director
Juvenile Justice Project of Louisiana
THREE YEARS IN AND 300 YEARS OUT

Fighting for the Legal Rights of Louisiana’s Incarcerated Youth

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