



November 16, 2011

Jo Ellen Cline
Government Relations Counsel
Supreme Court of Ohio
65 S. Front St., Seventh Floor
Columbus, Ohio 43215

Dear Ms. Cline,

We are writing to you in our capacities as the executive director and legal director of the American Civil Liberties Union of Ohio Foundation to express our support for Juvenile Rule 3, one of the proposed amendments to the Rules of Superintendence of the Courts of Ohio. The ACLU of Ohio believes strongly that juveniles must be afforded an attorney when they encounter the justice system. Young people cannot be presumed to have the capability to adequately understand the legal system without a responsible legal expert to guide them through the process. The U.S. Supreme Court repeatedly has recognized that juveniles require more protection than adults in the justice system.¹ Without an attorney by their side, juveniles are more likely to plead to offenses that they may not have committed, serve longer sentences in detention, and sacrifice their constitutional rights to due process.

Under current Ohio law, juveniles can waive their right to counsel with permission from the court, only after they have consulted with a parent, guardian, custodian, or attorney. While this has certainly been an improvement from past practices, it has still left many young people vulnerable. Under Juv. Rule 3, the juvenile will be able to waive his or her right to an attorney only after they have first consulted with a lawyer, and if a judge has fully explained the ramifications of the waiver. By requiring that children first consult with an attorney, the Court will better ensure the child is aware of the consequences of his or her decision and has received adequate legal advice.

Oftentimes, juveniles consult with a parent or guardian who has very limited experience with the criminal justice system, no knowledge about legal proceedings and state laws, and a limited understanding of the potential consequences of proceeding without an attorney. For a variety of reasons, parents may advise the young person to waive their right to counsel and proceed without legal representation. Many times the parent or child has never consulted with an attorney to understand their legal rights and the consequences of this decision.

Not only is this standard not in the best interest of the child, it harms the credibility of our justice system. Without an attorney, the likelihood that a juvenile will wrongly admit fault, or be deprived of his or her constitutional rights grows exponentially. In order for

¹ *J.D.B. v. North Carolina*, 564 U. S. ____ (2011); *Graham v. Florida*, 560 U. S. ____ (2010); and *Roper v. Simmons*, 543 U. S. 551 (2005).

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the public to have full confidence in our juvenile justice system, legal counsel must advocate for every child.

Studies suggest that young people who are detained are more likely to reoffend once they become adults. Juvenile courts should seek to rehabilitate these young people so they may learn new behaviors and avoid the pitfalls that could cause them to commit a future offense. By providing children with basic tools to become productive adults, the courts will protect Ohioans from crime and save taxpayer resources on future prosecution, law enforcement, and incarceration costs.

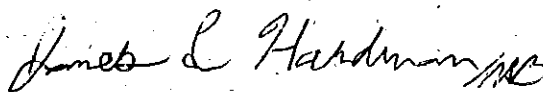
Opponents of Juv. Rule 3 may claim that this would impose an undue burden on local governments that would have to provide legal representation to juvenile offenders. This criticism misses the mark on several aspects. First, counties that do not have a high rate of waivers will not experience a severe increase in their costs. In the interest of justice, juvenile courts should already work to ensure children are represented by counsel. Courts should be reserved for children who are accused of serious crimes, and those juveniles have an even greater interest in ensuring they have counsel. Only those counties with a significantly high number of waivers would experience a substantial increase. In addition, the cost of providing an attorney to a juvenile may be recouped, or even have long-term financial benefits, if the child avoids costly juvenile detention and is diverted to rehabilitative therapy. Finally, although we appreciate these cost concerns, we must also emphatically restate that neither the Court — nor the public — should put a price tag on our constitutional liberties. Children should be represented in juvenile court, even if there is a small price that taxpayers must assume.

Juv. Rule 3 will provide a clear next step in protecting the constitutional rights of children in our juvenile justice system. The ACLU of Ohio, along with the Office of the Ohio Public Defender and Children's Law Center, has been a forceful proponent of these changes. However, we recognize that this administrative rule change will not completely ameliorate the problem of juveniles needlessly waiving their right to counsel. If the state wishes to eradicate this problem, it should explore policies in other states like Texas and Iowa, where juveniles may not waive their right to counsel. Adults have the absolute right to proceed without an attorney and represent themselves in court. However, juveniles simply are not equipped to do so. Given their lack of development, young people cannot adequately aid in their own defense, and are even more susceptible to coercive, unfair, or unconstitutional treatment.

We believe all juveniles should be represented by an attorney. Juv. Rule 3 is a positive step in the right direction and will constitute a substantial improvement to Ohio's juvenile justice system and ensure children are treated fairly.



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