



May 15, 2017

Jess Mosser, Esq.
Staff Liaison, Commission on Rules of Practice & Procedure
Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215-3431

Dear Ms. Mosser,

Today marks the 50th anniversary of the Supreme Court's decision in *In re Gault*, 387 U.S. 1 (1967), which sets forth the principle that children, too, have a constitutional right to counsel. The Children's Law Center, Inc., the ACLU of Ohio, and the Office of the Ohio Public Defender have come together to ask the Supreme Court of Ohio's Commission on the Rules of Practice and Procedure to strengthen the provisions in Juv. R. 3 to further restrict the circumstances in which youth proceed through court without the benefit of counsel intended by *Gault*. (See Attachment 1 for proposed language.)

In 2006, our organizations jointly sought an amendment to Juv. R. 3, noting that an estimated 2/3 of youth in some counties waived the right to counsel, or that there was no reimbursement sought through the Office of the Ohio Public Defender for these cases. In July of 2012, an amended version of Juv. R. 3 went into effect to prohibit courts from allowing waiver of counsel by children charged with felony counts until they have met privately to confer with an attorney. It further requires an advisement on the disadvantages of self-representation in any case where a youth could face loss of liberty, and establishes procedural requirements for courts before a child can waive.

Although this was a step in the right direction, Juv. R. 3 does not go far enough to ensure justice for Ohio's children. The Supreme Court of Ohio reports that for 2015, a total of 77,771 cases involving delinquency and status offender youth were heard in juvenile courts throughout Ohio. Although consistent and accurate data has never been kept through the online reporting system to document how many of these youth are appointed counsel, data obtained through the Office of the Ohio Public Defender for roughly the same time period suggests that between 28-42% of these cases were not appointed a public defender or assigned counsel, or that there was no reimbursement sought.¹ (See attachment 2)

¹ The difficulties of obtaining accurate information are many. Cases are not always counted in the same manner by the court, or by counties submitting for reimbursement. The range varies, with the lower percentage reflecting an estimated 20% reduction where private counsel is presumed to have been retained. This number has been used by

There is no logical reason why the protections against waiver of counsel should not extend to youth in non-felony cases where placement outside the home, whether in juvenile detention, correctional treatment, mental health facilities, or other residential placement, is possible. The staff notes to the 2012 Juvenile Rule 3 amendment indicate the rule change is “intended to implement a process for the mandates of the United States Supreme Court’s decision *In re Gault* (1967), 387 U.S. 1 and the Supreme Court of Ohio’s decision *In re C.S.* (2007), 115 Ohio St.3d 267, 2007-Ohio -4919, to ensure children have meaningful access to counsel and are able to make informed decisions about their legal representation.”² Gerald Gault was, in fact, charged and found guilty of a misdemeanor.

The initial proposed changes to Juv. R. 3 were met with concerns that the provision of lawyers would be too costly for counties, and that it was unnecessary for many cases. Juvenile case filings have dropped dramatically, however, from 147,867 delinquency and status cases filed in 2004 down to 77,771 in 2015, roughly 50%.³ The data suggests that many counties are already assuring that many if not most youth are represented, including a number of larger counties such as Franklin, Lucas, Montgomery and Cuyahoga.

In light of the pending anniversary of the *Gault* decision, the National Juvenile Defender Center released *Defend Children: A Blueprint for Effective Juvenile Defender Services* in November of 2016.⁴ The Blueprint calls for those who work in the juvenile justice field to recognize the need for a more comprehensive, system wide approach to ensuring the fundamental rights of children in the delinquency system are upheld. It highlights innovative programs which can be replicated throughout the country to address the ongoing crisis in indigent defense, calling on all states to champion, uphold and fund children’s right to counsel. It addresses the pervasive racial and ethnic disparities which follow decades of delinquency prevention focused on control and enforcement in lieu of effective treatment and positive youth outcomes. But it begins and ends with ensuring that all youth receive effective representation.

Ohio can and should extend the same provisions within Juv. R. 3 to any cases in which out of home placement is possible, including misdemeanor and status cases. Such appointments should be made without consideration of the income level of parents, guardian or custodian as mandated by law, and incorporated into the proposed rule⁵ Courts do not interpret this provision

national experts to estimate the number of non-indigent defendants in criminal proceedings, but it is likely that the number of youth with private counsel is considerably lower in delinquency proceedings.

² See Juv.R. 3, Staff Notes on Juvenile Rule 3 at

<http://www.supremecourt.ohio.gov/LegalResources/Rules/juvenile/JuvenileProcedure.pdf>

³http://www.supremecourt.ohio.gov/Publications/annrep/04OCS/2004_Court_Summary.pdf

⁴ <http://njdc.info/blueprint/>

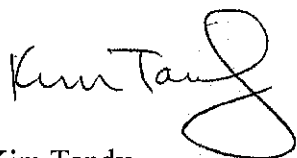
⁵ Ohio Administrative Code 120-1-3, (B) (4). Such provision states that “[A]n applicant is presumed indigent and thus entitled to the appointment of counsel at state expense under the following circumstances:.....(4)The applicant is a child as defined in division (B)(6) of section 2151.011 or division (C) of section 2152.02 of the Revised Code. In determining the eligibility of a child for appointed counsel, the income of the child’s parent, guardian, or custodian shall not be considered.”

consistently across counties, resulting in some youth risking the denial of appointed counsel unnecessarily.

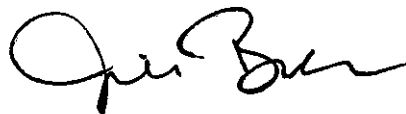
In recognition of the 50th anniversary of the landmark decision in Gault recognizing that children need “the guiding hand of counsel at every step in the proceedings,” we ask that the attached changes be made in Juv. R. 3 to ensure that all youth, regardless of offense and geography, receive the same protections regarding the appointment of counsel and the restrictions on waiver of counsel.

We stand ready to answer questions and to provide additional information if needed. Please do not hesitate to contact us as you proceed.

Sincerely,



Kim Tandy
Executive Director, Children’s Law Center, Inc.



Jill Beeler, Deputy Director
Office of the Ohio Public Defender



Mike Brickner, Senior Policy Director
ACLU of Ohio

Attachments:

- 1) Proposed Changes to Juvenile Rule 3
- 2) Estimated Waiver Rates by County
- 3) Letter of Support, National Juvenile Defender Center