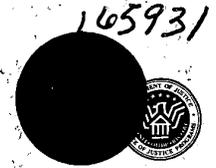


U.S. Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention
State Relations and Assistance Division



Challenge Activities Program Areas



Challenge to the States

The 1992 reauthorization of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 added Part E, State Challenge Activities, to the programs funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The purpose of Part E is to provide initiatives for States participating in the Formula Grants Program to develop, adopt, and improve policies and programs in 1 or more of 10 specified Challenge areas.

Challenge Activity B

Developing and adopting policies and programs to provide access to counsel for all juveniles in the justice system to ensure that juveniles consult with counsel before waiving the right to counsel.

Background

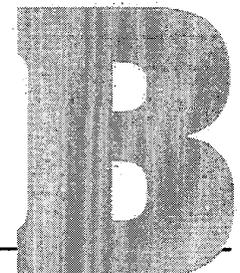
Juvenile crime trends in America are characterized by escalating youth violence and use of firearms, younger offenders committing more serious offenses, increased use of waiver to criminal court, and extended sentences. More than ever, juveniles are facing serious consequences for committing delinquent acts and should have access to quality legal representation. All juveniles have the right to counsel, but many do not understand these rights or know how to access the legal services they need.

The 1967 landmark case of *In re Gault*¹ established due process rights of minors in the juvenile justice system. The Supreme Court ruled that in the adjudicatory phase of a delinquency proceeding that could result in a loss of liberty, a juvenile is entitled to due process rights, including adequate notice of the charges pending; confrontation and cross-examination of witnesses; representation by an attorney and appointment of counsel if the juvenile cannot afford to retain an attorney; and protection against self-incrimination and advisement of that right prior to presenting any testimony in the juvenile court proceeding.

The *Gault* case facilitated the transformation of the juvenile court in America from a largely informal institution into a more formal system with greater similarities to the criminal court. The spirit and intent of the *Gault* decision was to expand the juvenile court's concern about the legal needs of children to include upholding their basic constitutional rights. The cornerstone of *In re Gault* was the articulation of the right of juvenile offenders to receive competent and zealous counsel. The other fundamentals of due process largely flow from the observance of this basic right. Consequently, the development of policies and procedures to secure this constitutional guarantee is essential to the ultimate achievement of due process and fundamental fairness within the juvenile court system.

Problems Encountered

While *Gault*'s due process principles were familiar and straightforward, there was a great deal of question about how they were to be implemented in the juvenile justice system. Across the country, lawyers were rarely present in juvenile delinquency proceedings. Indeed, judges often discouraged juveniles from securing a lawyer, believing that the presence of attorneys would lengthen the time needed for trying a delinquency case and that counsel would introduce undue formality into the juvenile justice process. There was also a common perception that the participation of counsel would undermine the *parens patriae* model of a treatment-



oriented court, one not particularly focused on guilt or innocence, but rather on the needs of the child.

Research in the area of access to counsel for juvenile offenders has raised concerns that the rights defined in the *Gault* decision more than a quarter of a century ago have not been fully extended to youth. Researchers have repeatedly found low percentages of legal representation in juvenile courts across the country:

- A 1972 study of court records in one affluent county reflected that only 27 percent of the juveniles charged with delinquency were represented by an attorney.²
- In 1974 in New York, only 59 percent of the juveniles appearing in family courts outside New York City were represented by counsel.³
- According to a 1980 report, a North Carolina juvenile defender project represented only 22 percent of juveniles charged with delinquency in Winston-Salem, and only 46 percent of youth charged with delinquency in Charlotte.⁴
- A 1982 study of a major north-central city found representation levels at 32 percent.⁵
- In 1986, representation levels of only 26 percent and 39 percent were found in two test sites.⁶
- A 1988 study in Minnesota found a majority of juveniles were unrepresented in delinquency proceedings, and there was a wide disparity in practice from jurisdiction to jurisdiction across the State.⁷
- In 1992, fewer than one-half of all delinquents received assistance of counsel, and in 5 of 10 Minnesota Judicial Districts, lawyers accompanied fewer than 40 percent of juveniles.⁸

Many of these studies found that juveniles were not advised of their right to counsel in a meaningful fashion, or were explicitly or implicitly discouraged from exercising that right once they were informed. When lawyers were appointed, they frequently did little or nothing on their clients' behalf. One study reported that institutional pressures in juvenile courts have significantly compromised the representational roles of defense attorneys. As a result of these findings, some researchers have advocated the abolition of the juvenile court because of its perceived incapacity to protect minors' due process rights.⁹

There are several explanations for the continuing low levels of legal representation for juveniles charged with delinquency. Parents are often slow to retain a lawyer for their child facing delinquency charges, especially where there is tension between the youth and the parents. Systems for delivering defense services to indigent juveniles in rural or inner-city areas may be inadequate or significantly overloaded. Judges may decline to appoint a lawyer for a juvenile where the offense is minor or where it is highly unlikely that the youth will be incarcerated or given a severe penalty if convicted. Other judges may resent

the "interference" that lawyers represent to their continuing a *parens patriae* style court.

Effective representation by a competent attorney at the earliest possible stage of juvenile justice processing is extremely important. When legal counsel is not involved in the pretrial stages of a case, youthful offenders may be more likely to make damaging admissions or confessions, or to be subjected to intrusive police investigation techniques. Defense attorneys can suggest, to the intake officer or the court, appropriate alternatives to formal court handling and detention.

Several studies have indicated that the presence of a competent lawyer may indeed enhance outcomes for delinquent youth. An Australian study suggested that the involvement of defense attorneys may have a greater impact on plea bargaining and other informal practices than on the formal processes in the courtroom.¹⁰ A San Francisco study of the impact of a defense-based disposition case advocacy project found significant reductions in commitments to secure public institutions and a decrease in the number of juveniles transferred to adult courts.¹¹ Legal representation is also a consideration for incarcerated youth. The American Corrections Association standards require facilities to permit juveniles to access an attorney through visits, use of the telephone, and uncensored correspondence.¹²

In addition, recent studies of minority overrepresentation in the juvenile justice system show that minority youth may disproportionately face prejudice because they are less likely to be represented by counsel. Since many minority youth are indigent defendants, they are often affected by the systemic disinterest that accompanies public defender systems. A Michigan study of minority overrepresentation found that white youth generally reported higher levels of satisfaction with their lawyers than African-American youth. In one medium-sized city in that State, white juveniles reported a satisfaction quotient of 9 out of 10 contrasted with 3.9 of 10 for African-American youth.¹³

Strategies To Ensure Access to Counsel

In the wake of the *Gault* decision, several national groups developed standards for juvenile justice that outlined due process rights in juvenile court. All of these standards addressed the implementation of the right to counsel and articulated a model for the role of counsel:

- The Task Force on Juvenile Justice and Delinquency Prevention of the National Advisory Committee on Criminal Justice Standards and Goals called for the provision of legal representation "at the earliest feasible stage," without charge, if necessary, and urged that counsel should be adequately trained and should "represent zealously a client's legitimate interests under the law."¹⁴
- The Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice recommended that counsel should appear in all delinquency and noncriminal

misbehavior (status offense) proceedings, and that the right to counsel should attach as soon as the youth is taken into custody, a complaint is filed, or the juvenile appears at intake or at an initial detention hearing, "whichever occurs first."¹⁵

- The National Advisory Committee for Juvenile Justice and Delinquency Prevention recommended that counsel representing a private party should "represent zealously a client's legitimate interests under the law."¹⁶
- The *Juvenile Justice Standards Relating to Counsel for Private Parties*, issued by the Institute of Judicial Administration and the American Bar Association (ABA), provided a comprehensive set of guidelines for the provision of legal services for juveniles. They agreed that the right to counsel should attach at the earliest possible stage of the proceedings and that the role of the lawyer was to be a zealous advocate for the youthful client.¹⁷

Despite the almost universal praise for these standards as models for the implementation of the right to counsel, they seem to have had little practical effect on representation rates.

There is much debate about the best strategy for upgrading the quality of legal representation for juveniles. The two most common methods of appointing counsel for juveniles are the public defender and court-appointed counsel systems, followed by law school clinics specializing in youth issues, and non-profit law centers. Some localities contract with a public interest law firm or private law firm to provide systemwide defense services to delinquent youth. Very little research has been done comparing the effectiveness of the various models.

While considerable research has been conducted on the problems of access to counsel, few resources have been dedicated to developing effective strategies for improving representation rates. The 1991 Annual Report of the National Coalition for Juvenile Justice urged that "the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) significantly increase interest in and funding for advocacy on behalf of juveniles in court." The report recommended more training for legal counsel and guardians *ad litem* for juveniles, examination of the incidence of waiver of counsel by juveniles, and the development of pilot and model programs for delivering effective defense services to juveniles.¹⁸

Congress amended the Juvenile Justice and Delinquency Prevention Act in 1988 to incorporate new provisions for youth advocacy programs, including services that improve the legal representation of youth.¹⁹ Recognizing that legal representation for youth continued to be ineffective or absent, the Act was further amended in 1992 to "establishing or supporting advocacy programs and services that encourage the improvement of due process available to juveniles in the juvenile justice system and the quality of legal representation for such juveniles."²⁰

As a result of this support, OJJDP awarded a 3-year grant to ABA's Juvenile Justice Center, in consort with the Youth Law Center and the Juvenile Law Center, for a Due Process Advocacy Program Development initiative. The ABA conducted a

national assessment of defense services for juveniles charged with delinquency and reviewed pertinent statutory and case law concerning juvenile delinquency representation. In addition, the ABA will address quality and access issues through the development of training, technical assistance, and advocacy.²¹

Acknowledging continuing deficiencies in this area, Congress asked the General Accounting Office in 1992 to study access to counsel for juvenile offenders. They are in the process of (1) reviewing State laws for selected States to determine juveniles' right to counsel, (2) determining the frequency with which juveniles have counsel in juvenile courts, (3) determining the impact of counsel on juvenile dispositions, (4) determining whether juveniles in adult court have counsel, and (5) developing insights regarding the quality of counsel.²²

Promising Approaches

As a component of their assessment, the ABA searched for unique programs that would provide counsel and advocacy services for indigent juveniles charged with delinquency. Several notable characteristics shared by many juvenile defense programs include:

- Creative use of Federal, State, local, and private funding sources.
- Commitment to manageable caseloads.
- Excellent training and supervision.
- Innovative use of law and other graduate students.
- Strong community involvement.
- An interagency "team" approach to cases.

The programs cited below are just a sampling of promising approaches being implemented across the country that strive to provide effective representation to juveniles. Additional information can be found in the Resources section of this paper or by contacting the ABA Juvenile Justice Center directly.

Children's Law Center of Massachusetts, Inc. The goal of the Center is to provide comprehensive legal representation to youth in the juvenile court and human services systems. The Center specializes in complex cases that involve multiple service agencies addressing such issues as children in need of services, delinquency, and special education. Three part-time attorneys handle approximately 200 direct service cases annually. They are also responsible for processing intakes, limited representation cases, appeals work, and amicus briefs. All funding for the organization is private, with contributions from national and local foundations.

Contact: Anthony DeMarco

Children's Law Center of Massachusetts, Inc.
P.O. Box 710
37 Friend Street
Lynn, MA 01903
617-581-1977

Dade County Juvenile Defender Unit. Part of the public defender's office in Miami, the Dade County Juvenile Defender Unit of the 11th Judicial Circuit Court of Florida is staffed by 28 lawyers serving in 4 juvenile courts, 4 social workers, and 4 investigators. Juvenile defenders are equipped with pagers to ensure that they can respond to juveniles immediately at intake. Juveniles who are not detained are assigned defense counsel at arraignment. Critical components of this unit are dedication to staff development, with training sessions held weekly, and commitment to maintaining manageable caseloads.

*Contact: Bennett Brummer
Dade County Juvenile Defender Unit
Dade County Public Defender
11th Judicial Circuit Court of Florida
1320 NW 14th Street
Miami, FL 33125
305-545-1900*

Detention Response Unit (DRU). The Baltimore Office of the Public Defender for the State of Maryland designed DRU to minimize overrepresentation of minorities in juvenile detention. The program is funded by an OJJDP grant administered by the State Juvenile Justice Advisory Council. The staff consists of one full-time attorney, one full-time social worker, and a part-time assistant who serve inner-city minority youth. If DRU is involved early in the adjudication process, it will advocate an alternative to commitment, such as community service. If DRU is assigned to an adjudicated case that is pending placement, it will advocate placement in a community-based group home. DRU can also assist youth in secure placements to transfer out or petition for a reduction in their period of commitment.

*Contact: Joseph McCormack
Detention Response Unit (DRU)
Office of the Public Defender
State of Maryland
201 St. Paul Place
Baltimore, MD 21202
410-333-4899*

Juvenile Special Defense Unit (JSDU). The Defender Association of Philadelphia has two units for juveniles. The Juvenile Unit has 18 attorneys who handle approximately 8,000 delinquency cases a year. A second unit, JSDU, was established to handle all of the habitual offenders and serious cases that are scheduled for trial or for certification to criminal court. Assigned to approximately 500 cases per year, JSDU uses a team approach with an attorney, social worker, and investigator who follow the case through the system. Initially supported by OJJDP formula grant funding, it is now sustained through local funding. Additional funds have been awarded for staff to support a Temple University study on the value of enhanced psychological evaluations of juvenile defendants.

*Contact: David Rosen
Juvenile Special Defense Unit
Defender Association of Pennsylvania
121 North Broad Street
Philadelphia, PA 19107
215-568-3190*

Mandel Legal Aid Clinic. Based at the University of Chicago Law School, the Mandel Legal Aid Clinic represents indigent juveniles subject to transfer to criminal court. In Illinois, juveniles over age 15 who are charged with a serious, violent felony or narcotics offense are automatically transferred to criminal court; transfer is discretionary for juveniles aged 13 to 15. Lawyers handle cases in both juvenile and criminal court and, depending on the case, may continue to consult with a client following disposition. There are plans to expand the program to include interns from the Divinity School, the School of Psychology, and the School of Urban Policy. The clinic is currently staffed by 3 lawyers, 30 law students, an inhouse social worker, and graduate social work interns. Initially funded by a grant from the Department of Education, the University now also provides funding.

*Contact: Randolph E. Stone
Mandel Legal Aid Clinic
University of Chicago Law School
6020 South University
Chicago, IL 60637
312-702-9611*

The Neighborhood Defender Services (NDS) of Harlem. Early intervention is a hallmark of NDS, which often provides legal advice to clients before formal contact with juvenile court. Located in Harlem, NDS's offices are easily accessible for local clients. This community-based approach increases the likelihood that defendants will seek counsel prior to their first court appearance. NDS employs a team approach that follows each case through resolution. The team consists of a leader, three staff attorneys, two community service workers, and an administrative assistant. Since NDS is not affiliated with a particular court system, defense teams continue to represent juvenile clients who are transferred to criminal court.

*Contact: Leonard Noisette
Neighborhood Defender Services of Harlem
55 West 125th Street
New York, NY 10027
212-876-5500*

The New York Legal Aid Society's Juvenile Rights Division. Operating since the mid-1960's in all five boroughs of the city, the Juvenile Rights Division represents New York City's youth in delinquency matters, child abuse and neglect, status offenses, and termination of parental rights. In delinquency cases, a public defender is appointed at the first formal appearance in juvenile court. Within the Juvenile Rights Division,

each case is assigned to a team that includes a supervising attorney, an investigator, a social worker, and an administrative assistant. Training and teambuilding are key components of the division, with an initial 5-week training course and periodic mentoring sessions and seminars supporting a collaborative and comprehensive approach to youth representation.

Contact: Gary Soloman
New York Legal Aid Society
Juvenile Rights Division
15 Park Row
21st Floor
New York, NY 10038
212-619-3890
Fax 212-406-0437

Ohio State Public Defender. Ohio's Department of Youth Services and the Appellate Division of the Office of the State Public Defender developed a project to provide better access to legal representation for juveniles who had been adjudicated delinquent and committed to State facilities. Law students conduct interviews with incarcerated juveniles to determine whether they had access to representation prior to commitment. Three attorneys file motions on behalf of indigent juveniles who have grounds for appeal, and they also file a motion to appoint counsel for the youth. Since the program began in May 1994, approximately 700 committed juveniles have been interviewed and 64 appeals filed.

Contact: Pam Conger
Ohio State Public Defender
8 East Long Street
Columbus, OH 43266-0587
614-466-5394

Truancy Intervention Project. Based on partnership between the Fulton County Juvenile Court and the Atlanta Bar Foundation, the Truancy Intervention Project seeks to effect an early, positive intervention for troubled youth. It matches volunteer lawyers with youth who have been reported for excessive school absence. Volunteer lawyers represent the youth in juvenile court and also become mentors for the truants and their families. The volunteer lawyers also direct their clients to appropriate social service resources such as clothing and food banks, emergency medical care, utility services, and tutoring. The Fulton County Juvenile Court provides funding for three probation officers who handle truancy cases exclusively; the court is also considering dedicating a judge to establish a truancy court. In addition, a local law firm is donating \$175,000 over 4 years to create a nonprofit organization, Kids In Need of Dreams (KIND), Inc., and to support a full-time project director.

Contact: Gail Harper
Truancy Intervention Project, KIND, Inc.
Georgia Hill Annex
250 Georgia Avenue SW.
Suite 207
Atlanta, GA 30312
404-730-8385

The Youth Advocacy Project (YAP). Created by the State public defender in Roxbury, Massachusetts, in 1992, YAP was initially designed to provide representation for juveniles charged with serious offenses and facing transfer hearings. It has since expanded to include delinquency cases in juvenile court and a violence prevention program that provides tutoring and mentoring for youth not involved in the juvenile justice system. YAP is staffed by a full-time attorney and three part-time attorneys. Matching grants from various private foundations support a social worker and two community liaisons. Unique components include community-based involvement through community liaisons, reconstruction of juveniles' social histories for needs assessments and treatment plans, and extensive use of forensic services.

Contact: Jay Blitzman
Youth Advocacy Project (YAP)
11 Roxbury Street
Roxbury, MA 02119
617-445-5640

Conclusion

Effective access to counsel strategies support the underlying principles of *Gault*; that is, children are entitled not only to be seen but also to be heard through the provision of effective legal representation. The importance of such accessible, high-quality legal representation for juveniles has increased with the proliferation of punitive laws, waivers to criminal court, and minority overrepresentation in the juvenile justice system.

Resources

Organizations

American Bar Association, Criminal Justice Section, Juvenile Justice Center, 1800 M Street NW., Washington, DC 20036; Patricia Puritz, 202-331-2622; Fax 202-331-2226.

General Accounting Office, 441 G Street NW., Room 3858A, Washington, DC 20548; Jim Blume, 202-512-8643; Fax 202-512-8692.

Juvenile Justice Clearinghouse, P.O. Box 6000, Rockville, MD 20849-6000; 800-638-8736.

Juvenile Law Center, 801 Arch Street, Suite 610, Philadelphia, PA 19107; Robert Schwartz, 215-625-0551; Fax 215-625-9589.

National Center for Juvenile Justice, 701 Forbes Avenue, Pittsburgh, PA 15219; Lisa Szymanski, Esq., 412-227-6950.

National Center for Youth Law, 114 Sansome Street, Suite 950, San Francisco, CA 94104; 415-543-3307; Fax 415-956-9024.

National Council for Juvenile and Family Court Judges, 1041 North Virginia, Third Floor, P.O. Box 8970, Reno, NV 89507; Joey Binard, 702-784-6012; Fax 702-784-6628.

National Conference of State Legislators, 1560 Broadway, Denver, CO 80202; Jay Kroshus, 303-830-2200.

The Spangenberg Group, 1001 Watertown Street, West Newton, MA 02165; Robert Spangenberg, 617-969-3820.

Youth Law Center, 1325 G Street NW., Suite 1020, Washington, DC 20005; Mark Soler, 202-637-0377; Fax 202-347-0493.

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¹⁷ Institute of Judicial Administration-American Bar Association. 1980. *Standards Relating to Counsel for Private Parties*. Cambridge: Ballinger Publishing.

¹⁸ *A Unique Partnership For Children*. National Coalition for Juvenile Justice 1991 Annual Report.

¹⁹ Juvenile Justice and Delinquency Prevention Act of 1974 (Public Law 93-415), as amended by The Anti-Drug Abuse Act of 1988, Title VII, Subtitle F—Juvenile Justice and Delinquency Prevention Amendments of 1988 (Public Law 100-690), Section 261(a)(3).

²⁰ Juvenile Justice and Delinquency Prevention Act of 1974 (Public Law 93-415), as amended by The Juvenile Justice and Delinquency Prevention Amendments of 1992 (Public Law 102-586), Section 261(a)(3).

²¹ An interim project report will be available later this year. In addition, training and technical assistance will be available for States and local jurisdictions. For more information, contact Patricia Puritz, 202-331-2622.

²² Results of this study should be published in late 1995. To be added to a mailing list for this GAO report, fax your name, address, and telephone number to 202-512-8692; or call Jim Blume, 202-512-8643.

The Office of Juvenile Justice and Delinquency Prevention acknowledges the outstanding contribution made by Barry Feld, of the University of Minnesota Law School, Minneapolis; Patricia Puritz, director of the American Bar Association Juvenile Justice Center; and Robert E. Shepherd, Jr., professor of law, T.C. Williams School of Law, University of Richmond, Virginia, in the development of this paper.

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