



NATIONAL CONFERENCE OF STATE LEGISLATURES



Juvenile Defense Recognizing the Role, Strengthening our Systems



Presented by:

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October 1, 2015

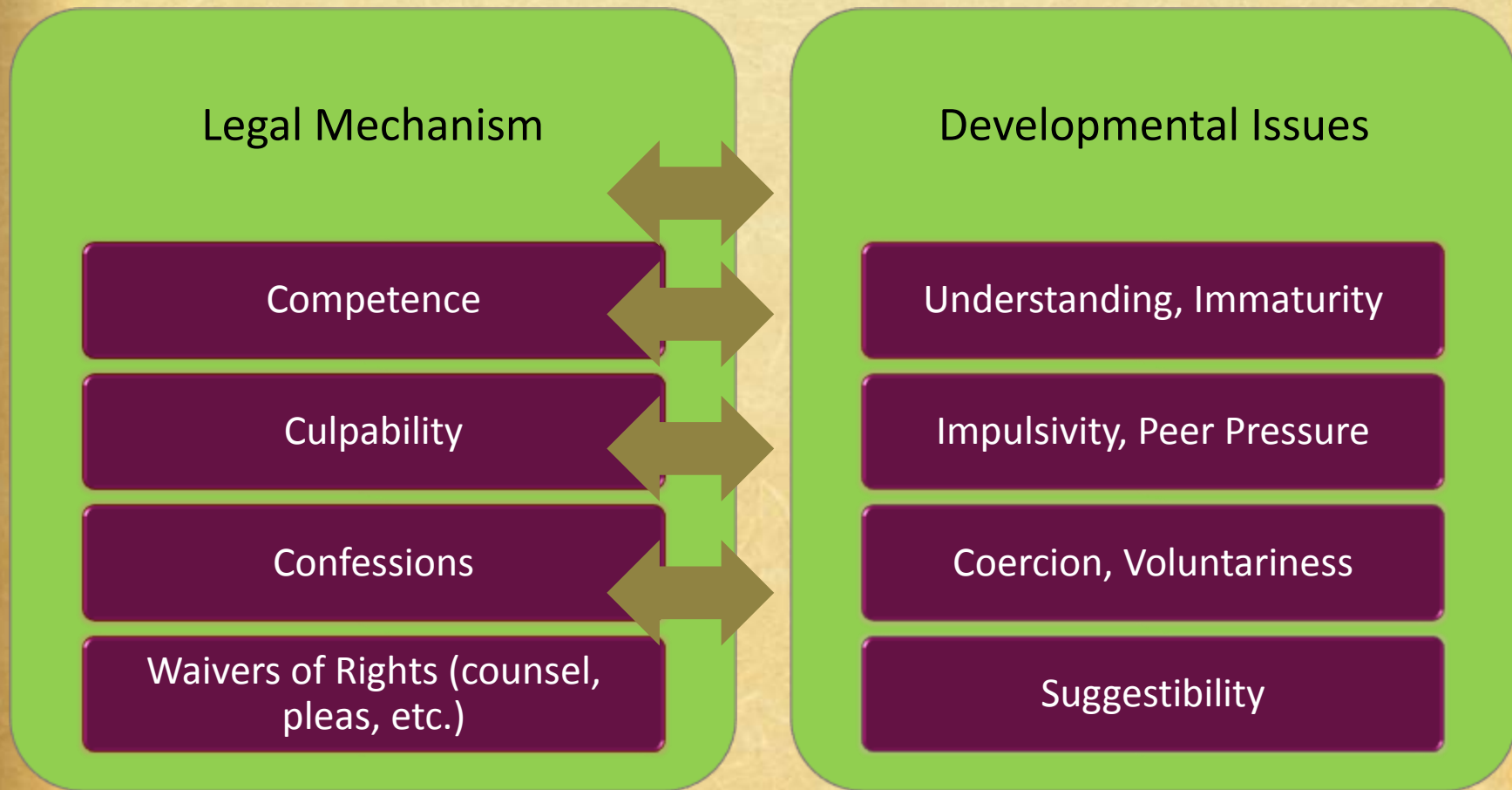
In re Gault, 387 U.S. 1 (1967)

“[t]he probation officer cannot act as counsel for the child. His role is ... as an arresting officer and witness against the child. ...

Nor can the judge represent the child.”

“The juvenile needs to assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of proceedings, and to ascertain whether he has a defense and to prepare and submit it.”

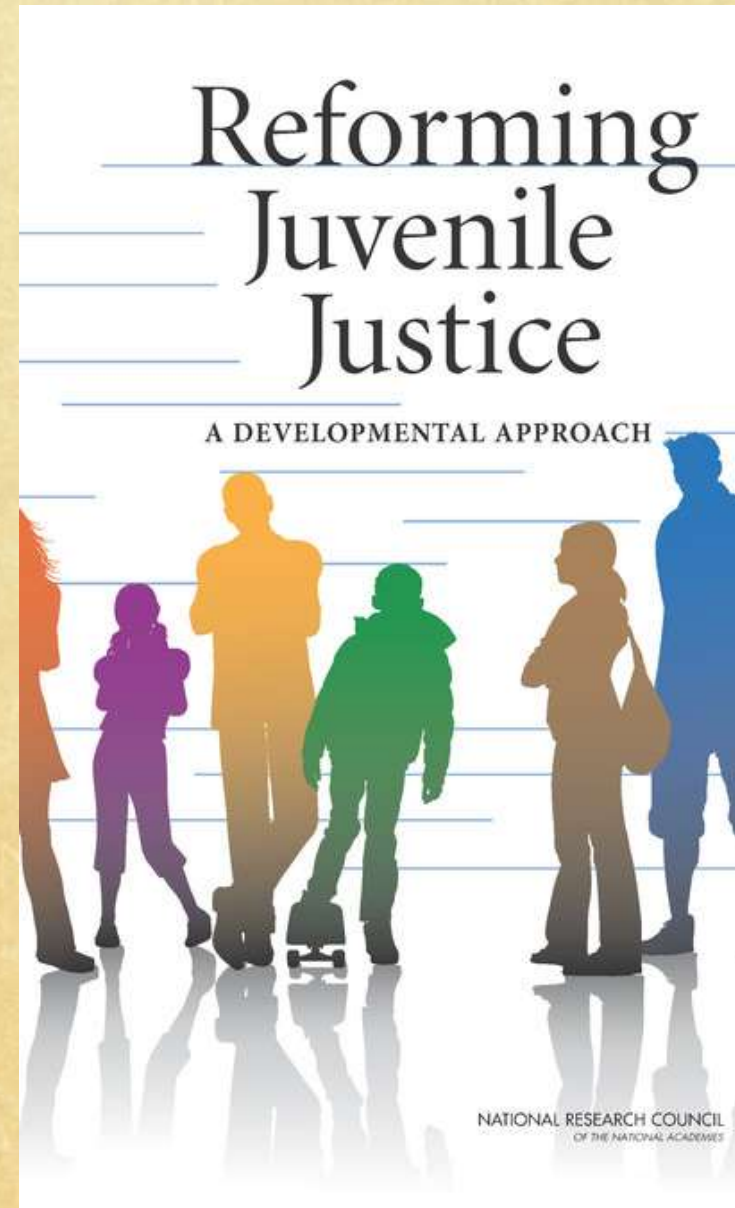
Gault Matters -- Youth Matters



Procedural Justice

Children and youth who develop positive values about the fairness of the legal system are a significant precursor to a child's legal socialization which impacts offending patterns over time.

As such, access to counsel and quality of representation in juvenile court merits special attention





NATIONAL JUVENILE DEFENDER CENTER

www.njdc.info

Coming Soon:

www.gaultat50.org

**Resource
Center
Partnership**
ModelsforChange

*NJDC: To promote justice for all children by ensuring
excellence in juvenile defense*



National Juvenile Defender Center



- New England Region
- Northeast Region
- Southern Region
- Central Region
- Midwest Region
- Western Region
- Southwest Region
- Mid-Atlantic Region
- Pacific Region

National Juvenile Defense Standards & Training



NATIONAL
JUVENILE
DEFENSE
STANDARDS

Models for Change
Systems Reform in Juvenile Justice



JUVENILE
TRAINING
IMMERSION
PROGRAM

A Curriculum for Developing a
Specialty in Juvenile Defense

Models for Change
Systems Reform in Juvenile Justice



NATIONAL JUVENILE DEFENSE COUNCIL

State Assessments of Access to Counsel and Quality of Juvenile Defense



Key Issues Seen in Assessments of *Access to Counsel*

Systemic issues impact access to counsel:

- ◆ Lack of early appointment of counsel at detention hearings and first appearances
- ◆ Indigence determination process creates barriers, poverty guidelines are too low
- ◆ Expansive waivers of counsel permitted
- ◆ Lack of post-disposition representation and re-entry

Key Issues Seen in Assessments of *Quality of Representation*

Juvenile defense systems are crippled by lack of resources and leadership

- ♦ Juvenile defenders do not receive specialized comprehensive training on juvenile issues.
- ♦ Juvenile defenders lack access to adequate non-legal support, including access to investigators.
- ♦ Juvenile defense is considered less important than criminal defense, and receives far fewer resources.
- ♦ Contract attorney fees low, no performance standards

Executive Action

Attorney General's National Taskforce on Children Exposed to Violence: Defending Childhood Report

“All children who appear in juvenile and adult proceedings have a constitutionally guaranteed right to counsel.⁷⁸ This is a right that all judges, prosecutors, and defense attorneys are sworn to uphold. Defense counsel plays an important role in ensuring fairness and equity in the juvenile justice system and protecting children from abuses of power by judges, prosecutors, probation officers, and correctional officials. In addition, defense attorneys are the only parties in the proceedings required by law to represent the expressed interest of the child.⁷⁷”

St. Louis County Family Court 2015

DENIAL OF CONSTITUTIONALLY-ADEQUATE ACCESS TO COUNSEL. St. Louis County Family Court fails to provide adequate representation for children in delinquency proceedings, in violation of the Due Process Clause of the Fourteenth Amendment. *In re Gault*, 387 U.S. 1, 34-43 (1967). Several factors contribute to this denial of constitutionally-adequate representation by counsel, including:

- ♦ the staggering caseload of the sole public defender assigned to handle all indigent juvenile delinquency cases in St. Louis County,
- ♦ an arbitrary system of determining eligibility for public defender representation and appointing private attorneys for children who do not qualify for public defender services,
- ♦ the flawed structure of the St. Louis County Family Court, and
- ♦ significant gaps in representation between detention hearings and subsequent court appearances.

DOJ - Civil Rights Division Agreement

Shelby County, Tennessee

The Agreement provides for *Due Process reforms*, including:

- ♦ **Establish a dedicated juvenile defender unit** in the public defender's office that will be independent of the court and have the structure and resources to provide independent, ethical, and zealous representation for children.
- ♦ **Require procedural safeguards against self-incrimination** to provide notice of charges and to hold transfer hearings.
- ♦ **Appoint counsel** before children appear before a magistrate judge for a probable cause determination and provide the probable cause determination within 48 hours for all warrantless arrests.
- ♦ **Make written findings** for key judicial decisions, including transfer hearings.
- ♦ **Implement policies in the court's detention facility** that will prohibit use of restraints, ensure a suicide prevention plan, and require staff to receive training on adolescent development.

DOJ - Civil Rights Division Statement of Interest, N.P. Georgia

Right to counsel is a central requirement of due process in delinquency proceedings.

The right to counsel is so fundamental to the operation of the criminal and juvenile justice systems that diminishment of that right erodes the principles of liberty and justice that underpin these proceedings...

Unique qualities of youth demand special training, experience, and skill for their advocates

Given the unique status of juvenile offenders, their right to counsel may be denied when they waive that right without first consulting with an attorney..

Legislative Action

Colorado H.B. 1032 (2014)

- ◆ Requires defense counsel at all detention hearings
- ◆ Requires public defender information on summons
- ◆ Parent Refusal Counsel—Public Defender System
- ◆ GAL cannot be appointed for defense counsel role
- ◆ Waiver of Counsel requires notification of collateral consequences of adjudication
- ◆ Data collection and annual reporting
- ◆ Allocated resources for additional public defenders

JUVENILE DEFENSE SYSTEMS

- ♦ NORTH CAROLINA: Established Office of the Juvenile Defender
- ♦ MASSACHUSETTS: Rigorous Performance Standards for Contract Attorneys
- ♦ COLORADO: Provides Social Workers to Public Defender System in Juvenile Cases
- ♦ LOUISIANA: Public Defender Board includes Director of Juvenile Services

- ♦ LOUISIANA: Children are presumed indigent for purposes of court-appointed counsel
- ♦ PENNSYLVANIA: Children are presumed indigent for purposes of court-appointed counsel
- ♦ ILLINOIS: Children under 13 must be represented by counsel at stationhouse interrogations



JUVENILE JUSTICE BILLS TRACKING DATABASE

Judicial Action

Court Rules

- ♦ Illinois Supreme Court Rule 660A—expedited juvenile delinquency appeals
- ♦ Florida Rule of Juvenile Procedure 8.010—mandated appointment of counsel at detention hearings
- ♦ Ohio Rule of Juvenile Procedure 3—prohibits waiver of counsel under certain circumstances
- ♦ Indiana Criminal Rule 25—requires written waivers of counsel, in the presence of counsel

New OJJDP Grants

Category 1

- ◆ Four State Planning Grants
- ◆ TBA

Category 2

- ◆ National Juvenile Training and Technical Assistance Center

Category 3

- ◆ Regional Defender Centers
- ◆ Southwest & Mid-Atlantic

QUESTIONS?

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