

AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION
REPORT TO THE HOUSE OF DELEGATES
RECOMMENDATION

BE IT RESOLVED, That the American Bar Association requests State and local bar associations to determine the extent to which statutory law and court rules in their States guarantee the right to counsel for children in juvenile court proceedings; and

BE IT FURTHER RESOLVED, That State and local bar associations are urged to actively participate and support amendments to the statutory law and court rules in their State to bring them into compliance with the Institute of Judicial Administration/American Bar Association Standards Relating to Counsel for Private Parties; and

BE IT FURTHER RESOLVED, That State and local bar associations are requested to ascertain the extent to which, irrespective of the language in their State statutory laws and court rules, counsel is in fact provided for children in juvenile court proceedings and the extent to which the quality of representation is consistent with the standards and policies of the American Bar Association; and

BE IT FURTHER RESOLVED, That State and local bar associations are urged to actively support programs of training and education to ensure that lawyers practicing in juvenile court are aware of the American Bar Association's standards relating to representation of children and provide advocacy which meets those standards.

REPORT

The United States will be celebrating the two hundredth anniversary of the Constitution in 1987. The plans for the Bicentennial call for much fanfare and activity commemorating the document that has been the basis of our form of government for two centuries.

However, 1987 has another significance that may be overlooked in the Bicentennial festivities. It is also the twentieth anniversary of the case that, more than any other, stands for the proposition that the Constitution protects the liberty of our young citizens who are under eighteen years of age, as well as the liberty of adults. That case is In re Gault 387 U.S.1 (1967) in which the Supreme Court held that the Constitution guarantees children in juvenile delinquency proceedings the right to the assistance of counsel.

In the decade that followed the Gault decision, the American Bar Association embarked on its Juvenile Justice Standards Project. Experts from all segments of the community, lawyers and non-lawyers, concerned with the juvenile justice system participated in the drafting, critiquing and revising of a comprehensive set of standards covering all aspects of the juvenile justice system. Of the twenty-three volumes drafted under the project, twenty were adopted as the official policy of the American Bar Association, including a volume entitled Standards Relating to Counsel for Private Parties. This volume recognizes the pivotal role that counsel for the child plays in assuring that the juvenile justice process is fair, just and comprehensible to the children subject to that process.

Notwithstanding the Gault decision and the promulgation of the ABA standards, there is some question concerning the extent to which the benefits of representation have in practice been extended to children in juvenile court proceedings. Although there have been very few studies of the provision of counsel for children since Lefstein, Stapleton & Teitelbaum, In Search of Juvenile Justice: Gault and Its Implementation, 3 Law & Soc'y Rev. 491, 561 (1969), there continues to be great concern that large numbers of children receive no representation at all. For example, statistics generated by the Minnesota Supreme Court Judicial Information System reveal that only about half of those juveniles charged with delinquency in that State were represented by counsel, with representation in some counties running as low as 10% (See Feld, Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court, 69 Minn. L. Rev. 169-187 (1984)).

There is additional concern that in those cases in which children are represented the quality of advocacy is poor. A study conducted recently under the auspices of the New York State Bar Association identified significant deficiencies in the representation afforded children in juvenile proceedings in New York State (See Knitzer and Sobie, Law Guardians in New York State: A Study of the Legal Representation of Children, New York Bar Association, 1984). The aforementioned information is particularly alarming since both New York and Minnesota have provided considerable leadership in the juvenile justice field.

In light of these concerns, the American Bar Association uses the twentieth anniversary of the Gault decision as an opportunity to reaffirm the Association's commitment to the provision of competent legal advocacy for children in juvenile court proceedings. It calls on State and local bar associations to take action to ensure that children are in fact receiving the legal representation which are called for by the IJA/ABA Juvenile Justice Standards.

Respectfully submitted,

Norman Lefstein
Chairperson

February 1987