

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

RECOMMENDATION

BE IT RESOLVED, that the American Bar Association urges the Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice to support the implementation of adequate defense and prosecution services in the nation's juvenile courts.

BE IT FURTHER RESOLVED, that the assessment and support of adequate defense and prosecution services receive priority attention by the Office of Juvenile Justice and Delinquency Prevention.

REPORT

"The Commission believes that no single action holds more potential for achieving procedural justice for the child in the juvenile court than provision of counsel. The presence of an independent legal representative of the child, or of his parent, is the keystone of the whole structure of guarantees that a minimum system of procedural justice requires."

(The President's Commission on Law Enforcement and the Administration of Justice: "The Challenge of Crime in a Free Society", p. 87 (1967), quoted In re Gault, 387 U.S. 1 (1967), footnote 6.)

Thus did the United States Supreme Court underscore the need for its application of the right to counsel to juvenile court, in the hopes of improving the prospect of informed decision-making and procedural fairness there.

However, there is mounting evidence, seventeen years after the *Gault* decision, that the requirement of counsel for children in the juvenile court is satisfied unevenly, at best. Defense services are woefully inadequate in many parts of the country, and non-existent in others. For example, a recent study of South Carolina's indigent defense system, conducted by Abt Associates, cited reports by some juvenile court judges that in as many as 95% of the serious juvenile cases coming before them, the young defendant "waived" the right to counsel. (The capacity of juveniles to waive a right so essential as the right to counsel in delinquency proceedings is, of course, doubtful. It should be noted that the IJA/ABA Juvenile Justice Standards recommend that the juvenile's right to counsel be non-waivable. Pretrial Court Proceedings, 6.1). Recently, lawyers through the use of habeas corpus proceedings, secured the release of dozens of children from Tennessee juvenile institutions because they had not been accorded their right to counsel in the proceedings that led to their incarceration.

These experiences conflict with one of the fundamental principles underlying the American Bar Association's Juvenile Justice Standards: that participation of counsel on behalf of all parties in juvenile and family court proceedings is essential to the administration of justice and to the fair and accurate resolution of issues in those proceedings. IJA/ABA Juvenile Justice Standards Relating to Counsel for Private Parties, Standard 1.1.

To implement the Juvenile Justice Standards, the American Bar Association in 1982 initiated the Juvenile Justice Standards Implementation Project. This Project, through publications, a newsletter, and conferences, has brought the American Bar Association to the forefront of national leadership in the juvenile justice field. A major focus of the Project has been working with the Juvenile Justice Committee of the Criminal Justice Section to ensure that juveniles accused of delinquency actually receive the due process protections which the United States Supreme Court has mandated.

Alarmed about the apparent lack of defense services for many juvenile delinquency cases, the Criminal Justice Section's Juvenile Justice Committee has launched a nationwide survey of the adequacy of the juvenile defense services. Preliminary results indicate that states and local jurisdictions, strapped as they are to provide even minimally adequate defense for adults, are able to provide even less funding for these services in the juvenile courts. Thus the mandate of Gault, now 17 years old, may hardly be met in jurisdictions across the country.

The Criminal Justice Section, however, is concerned not only about the inadequate availability of defense services in juvenile courts, but also about the inadequate availability of prosecutorial services in juvenile courts. Our adversary system is based on the assumption that decision-making is best made when adverse positions are advocated with equal zeal.

In the juvenile court, an informed prosecutor's office, with a demonstrated commitment to the purposes and ideals of the juvenile court, can make a significant and positive difference in the way children are treated. This is implicit in the ABA Juvenile Justice Standards (See especially IJA/ABA Juvenile Justice Standards Relating to Prosecution, Standard 1.1). Unfortunately, while the prosecutor's office in juvenile court may often benefit from more resources than its defense counterpart, such offices nevertheless often receive inadequate support.

The federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) is in a unique position to address the problems created by inadequate defense and prosecutorial services in juvenile courts. This office is a unit of the United States Department of Justice and is the only federal agency directly concerned with the quality of justice in the nation's juvenile courts. One of the mandates of the 1974 legislation which created OJJDP is that it should provide resources to "improve the juvenile justice system to conform to standards of due process". (Juvenile Justice and Delinquency Prevention Act of 1974, as amended, Section 224(a)(9)).

In its capacity as a clearinghouse for information and as a funding source for model programs and training efforts, OJJDP is able to provide substantial assistance to the states in creating adequate defense and prosecution services, and to identify sufficient funding mechanisms to finance such services. These efforts could include developing model programs for use by the states, disseminating information on progress which states may make towards achieving adequacy of defense and prosecution services in the juvenile court, and offering training and other technical assistance to the states to enhance the defense and prosecution functions of the juvenile court.

For OJJDP to provide this assistance is vital. To neglect such critical functions of the juvenile justice system as adequate defense and prosecutorial services will inevitably mean that some innocent children are incarcerated, while others who may be guilty, are nevertheless tragically confined in institutions which only teach them the finer arts of criminality. The need for improvement is long past due and the Criminal Justice Section urges the support of the House of Delegates in this effort.

Respectfully submitted.

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