

**IN THE SUPREME COURT  
FOR THE COMMONWEALTH OF PENNSYLVANIA  
MIDDLE DISTRICT**

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No. \_\_\_\_\_, M.D. Misc. Docket 2008

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**IN RE JESSICA VAN REETH; H.T., A MINOR THROUGH HER MOTHER, L.T.; ON  
BEHALF OF THEMSELVES AND  
SIMILARLY SITUATED YOUTH**

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Application For An Exercise of Either King's Bench Power Or Extraordinary Jurisdiction  
From Delinquency Dispositions Entered By The Luzerne County  
Court Of Common Pleas—Juvenile Division

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**APPLICATION OF JESSICA VAN REETH,  
H.T. & SIMILARLY SITUATED YOUTH  
FOR EXERCISE OF KING'S BENCH POWER  
OR EXTRAORDINARY JURISDICTION**

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**APPLICATION FOR THE EXERCISE OF KING'S BENCH POWER  
OR EXTRAORDINARY JURISDICTION**

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA:

Jessica Van Reeth and H.T., on behalf of themselves and all other children who have been the subject of delinquency proceedings in Luzerne County since October 1, 2005, ask this Court to exercise either its King's Bench Power or extraordinary jurisdiction to end the practice in Luzerne County of conducting delinquency hearings without counsel for children -- or without lawful waivers of counsel. Unless this Court accepts jurisdiction hundreds of youth will have no adequate legal remedy. Pursuant to the Judicial Code, 42 Pa. C.S. §§ 502, 721 & 726, Section 1 of the Schedule to the Judicial Article of the Pennsylvania Constitution, and Rules 3307 & 3309 of the Pennsylvania Rules of Appellate Procedure, this Court may assume plenary jurisdiction; and, for the reasons outlined below, it should assume jurisdiction because the constitutionally protected right to counsel applies with special force to children charged with delinquency, who are the least likely to understand courtroom proceedings and the most likely, without the aid of counsel, to make poor decisions that could forever change the course of their lives. In a matter that plainly meets this Court's test of great and immediate public importance, this application seeks to restore the constitutional rights of these youth, as well as their rights under the Pennsylvania Juvenile Act and the Pennsylvania Rules of Juvenile Court Procedure.

**I. INTRODUCTION: APPLICANTS ARE ASSERTING A CLAIM THAT HAS BEEN SETTLED AS A MATTER OF CONSTITUTIONAL LAW FOR FORTY YEARS**

More than forty years ago the United States Supreme Court held in In re Gault, 387 U.S. 1 (1987), that the Due Process Clause of the Fourteenth Amendment guarantees youth charged with delinquency a constitutionally protected right to counsel. In Gault, the Supreme Court vacated the delinquency adjudication of fifteen-year-old Gerald Gault. The Court held that accused youth facing the prospect of incarceration have the right to counsel. Gault recognized that a system in which children's interests are not protected is a system that violates due process. Attorneys are needed in the juvenile justice system to assist clients to "cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether [the client] . . . has a defense and to prepare and submit." 387 U.S. at 36.

Consistent with Gault, and because delinquency adjudications now carry greater consequences,<sup>1</sup> Pennsylvania's General Assembly and this Court established that the right to counsel extends to juveniles through all stages of the juvenile delinquency process (*e.g.*, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal). The General Assembly codified a juvenile's right to counsel in the Juvenile Act.

Section 6337 of the Act states "a party is entitled to representation by legal counsel at all stages

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<sup>1</sup> Today, the need for the assistance of counsel in juvenile court is even more paramount, as delinquency dispositions have become longer and more punitive, and delinquency adjudications now carry collateral consequences that follow youth into adulthood and, in some cases, for the rest of their lives. Of equal if not greater importance, as the stakes in juvenile court have risen, social science research has confirmed that most youth lack the capacity, on their own, to understand the nature of those stakes and to make intelligent decisions about how to navigate the increasingly complex dimensions of the modern juvenile court. T. Grisso, L. Steinberg, *et al.*, *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adult Capacities as Trial Defendants*, LAW AND HUMAN BEHAVIOR, Aug. 2003, at 333-363. Because of these complexities, children charged as delinquents should be provided with continuous legal representation throughout the delinquency process including, but not limited to, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement and sealing of records.

of any proceedings under [the Juvenile Act].” The judiciary’s concern about delinquency hearings proceeding without counsel for the child led this Court to require, effective October 1, 2005, that juvenile courts conduct an extensive colloquy to determine a juvenile’s comprehension of the consequences of waiver. Pa.R.J.C.P. 152.

Despite these clear constitutional and statutory mandates, youth subject to the jurisdiction of the Luzerne County Court of Common Pleas–Juvenile Division (Luzerne County Juvenile Court) are routinely and tragically denied counsel. State records, statements from adjudicated youth, and transcripts of court proceedings all confirm that since October 1, 2005 hundreds of youth in Luzerne County have appeared without counsel during the most critical phases of delinquency proceedings as a consequence of unlawful waivers of counsel, resulting in unconstitutional admissions of guilt, delinquency adjudications, and out-of-home placements.

Data about Luzerne County<sup>2</sup> reveal *fifty* percent of juveniles appear without counsel in Luzerne County Juvenile Court (*i.e.*, in 2005, there were 285 instances of youth appearing without counsel out of 569 hearings before a master or judge; and, in 2006, there were 281 instances of unrepresented youth out of 544 dispositions that resulted in hearings before a master or judge) nearly *ten times* the state average for waiver of counsel (*i.e.*, 5.9 percent). Data from 2005 and 2006 alone show more than 200 children that were unrepresented at juvenile court hearings were adjudicated delinquent and removed from their homes. Nearly *sixty* percent of delinquency dispositions for youth without counsel resulted in out-of-home placement.

Data for 2007 and 2008 is not publically available, however in 2007 named applicants Van Reeth and H.T. were the subjects of delinquency petitions and separately appeared in the

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<sup>2</sup> See *infra*, Section II.B.1, discussing data about the absence of attorney representation in delinquency hearings throughout the Commonwealth and Luzerne County.

Luzerne County Juvenile Court without a lawyer. In each instance the Luzerne County Juvenile Court held a hearing, accepted the youth's unlawful waiver of counsel and un-counseled admission, and adjudicated each delinquent for misdemeanor offenses. Applicants Van Reeth and H.T. (both first time offenders) were removed from their families and committed to residential treatment programs for three months. In addition to Van Reeth and H.T., counsel is aware that in 2007 at least three other youth appeared in Luzerne County Juvenile Court without counsel and were adjudicated delinquent based on his/her un-counseled admission and sanctioned by the Juvenile Court. These youth—like named applicants—were unrepresented at fundamental and critical stages of the delinquency process—*i.e.*, adjudication, disposition.

Unless this Court grants jurisdiction, applicants and similarly situated youth have no adequate remedy of law. Hundreds of youth appear in Luzerne County Juvenile Court unaware of the consequences of waiving their constitutionally protected rights, and when adjudicated delinquent they do not understand (and cannot exercise in a timely manner) their appellate rights.<sup>3</sup> No appeal can be filed in the Superior Court of Pennsylvania for named applicants Van Reeth and H.T. because thirty days have elapsed since the Juvenile Court's disposition (sentencing) orders, and the Superior Court is without jurisdiction to hear an appeal where an appellant has not filed a timely notice of appeal. Further, unrepresented youth who were adjudicated delinquent and are presently in court-ordered residential treatment cannot raise these claims through a Post-Conviction Relief Action (PCRA) because PCRA does not apply to juveniles. Matter of J.P., 573 A.2d 1057 (Pa. Super. 1990); 42 Pa.C.S.A. § 6354(a) (An order of delinquency "is not a conviction of crime and does not impose any civil disability ordinarily

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<sup>3</sup> The Luzerne County Juvenile Court does not conduct a colloquy on the record that makes youth aware of the right to counsel and the consequences of waiving that right. See *infra* Section IV.B. & C.

resulting from a conviction."); see also In Interest of DelSignore, 375 A.2d 803, 806 n. 3 (Pa. Super. 1977) (PCRA does not apply to juveniles).

Applicants request that the Court (1) order the Luzerne County Juvenile Court to identify to this Court and to applicants' counsel every instance, since the Rules of Juvenile Court Procedure became effective (Oct. 1, 2005), in which a juvenile was subject to a delinquency hearing before a judge or master without legal representation and either adjudicated delinquent or subjected to court supervision; (2) order the Luzerne County Juvenile Court to vacate the adjudication and disposition orders of all youth adjudicated delinquent and sanctioned without legal representation, and who remain in the custody or supervision of the Juvenile Court; (3) order the Luzerne County Juvenile Court to expunge any and all adjudications and dispositions since October 1, 2005 which occurred without legal representation for youth no longer under Juvenile Court supervision; and (4) award reasonable attorneys' fees, as well as such additional or alternative relief as this Court deems just, proper, or equitable.

Prompt consideration and disposition of this matter is critical. The facts necessary to decide the appeal are undisputed and the law is well-established. Although named applicants are no longer under the custody and supervision of the Luzerne County Juvenile Court they can be harmed by the collateral consequences from delinquency adjudication (*e.g.*, disqualification from public housing, limited employment opportunity, loss of driving privileges, sentencing in future criminal proceedings). Scores of youth still under Juvenile Court supervision will suffer irreparable injuries as a consequence of continued placement in residential treatment. Finally, every day that this unconstitutional denial of counsel is allowed to continue, unknown numbers of youth are at risk of being adjudicated delinquent without the assistance of counsel and removed from their families and communities.



Relief will benefit not only named applicants and similarly situated youth in Luzerne County but will restore and preserve the integrity of the Commonwealth's juvenile justice system. It is in the public's interest that juveniles are tried in a fair and appropriate manner, with the full panoply of constitutional and statutory rights, including the assistance of counsel and admissions of juveniles made voluntarily, knowingly and intelligently. Accordingly, applicants request this Court take jurisdiction of this matter and decide it on an expeditious basis so that the illegal policies and practices described above and in detail below may be ended once and for all.

## **II. FACTUAL & LEGAL BACKGROUND**

This Application is filed by two named youth—Jessica Van Reeth and H.T.—on behalf of themselves and minors similarly situated who appeared, or will in the future appear in delinquency proceedings in the Luzerne County Juvenile Court without legal representation, and without a lawful knowing and intelligent waiver of their right to legal representation.. Applicants submit that delinquency hearings without counsel violate their rights to due process under the U.S. Constitution, the Pennsylvania Juvenile Act, and the Pennsylvania Rules of Juvenile Court Procedure. Applicants seek injunctive and other appropriate relief.

### **A. Named Applicants**

Named applicants are youth who were the subjects of separate delinquency petitions for alleged violations of the Pennsylvania Crimes Code. In each instance the Luzerne County Juvenile Court held a hearing (trial), permitted the youth to appear without a lawful knowing and intelligent waiver of counsel, accepted the youth's admissions, adjudicated each delinquent, and then issued sanctions. Applicants Van Reeth and H.T. were each committed to residential programs away from their families and community. Neither was represented by counsel. There is no evidence of record that the Luzerne County Juvenile Court ever conducted an inquiry about

the consequences of waiving counsel or admitting to the underlying conduct, or in any other way conducted a constitutionally adequate colloquy with applicants prior to accepting their uncounseled admissions and waiver of counsel.

*Jessica Van Reeth* is an eighteen-year-old female who resides with her parents in Luzerne County, Pennsylvania. On January 30, 2007, Jessica, then sixteen, appeared before the Honorable Mark A. Ciavarella of the Luzerne County Juvenile Court for an adjudication hearing on a delinquency petition alleging a single violation of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-113(a)(32). Specifically, Jessica was charged with Possession of Paraphernalia, a misdemeanor, for possessing a cigarette lighter and pipe. See Exhibits A & B, Affidavits of Jessica and Jack Van Reeth. Before the filing of this petition Jessica had no prior contact with law enforcement. Jessica appeared in court without private counsel, nor was she appointed counsel. Prior to the hearing, Jessica was not advised of her right to counsel, nor did the Juvenile Court administer a colloquy with Jessica on the record to explain the consequences of proceeding without counsel.

During the adjudication hearing, and without the assistance of counsel, Jessica admitted possessing a cigarette lighter and pipe. The Juvenile Court did not conduct a colloquy with Jessica on the record to explain her rights and make a determination as to the appropriateness of her admission. At the conclusion of the evidentiary portion of the hearing the Juvenile Court adjudicated Jessica delinquent and immediately committed her to a residential treatment facility for three months. She was released April 26, 2007 and placed on intensive probation for an additional three months. The Juvenile Court's supervision over Jessica ended September 17, 2007. Jessica seeks immediate expungement of her adjudication and disposition.

*H.T.* is a seventeen-year-old female who resides with her parents in Luzerne County, Pennsylvania. On April 17, 2007, *H.T.*, then fifteen, appeared before the Honorable Mark A. Ciavarella of the Luzerne County Juvenile Court for an adjudication hearing on a delinquency petition listing a single violation of the Pennsylvania Crimes Code, 18 Pa.C.S. § 2709(a)(4), Harassment, a third degree misdemeanor. Specifically, *H.T.* was charged with creating a “My Space” page (a website) about the assistant principal of her high school. *H.T.* did not have private counsel, nor was she appointed counsel. At the courthouse, prior to the adjudication hearing, *H.T.*’s mother signed a form, given to her by Luzerne County’s Office of Juvenile Probation without explanation, waiving her daughter’s right to counsel.<sup>4</sup> This waiver of counsel statement itself failed to explain the consequences of appearing in court without a lawyer. *H.T.* did not sign the statement.

*H.T.*’s petition case was the first matter called. At no point during the adjudication hearing did the Juvenile Court explain the consequences of proceeding without counsel. Without the assistance of counsel, *H.T.* admitted creating the website in question. The Juvenile Court did not conduct a colloquy with *H.T.* on the record to explain her rights and make a determination as to the appropriateness of her admission. At the conclusion of the hearing the Court found that *H.T.* committed harassment, adjudicated her delinquent, and immediately committed her to a residential treatment facility.<sup>5</sup> A transcript of the April 17, 2007 adjudicatory and disposition

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<sup>4</sup> An unsigned “Waiver of Counsel” Form of Luzerne County Juvenile Court and its Probation Office is attached as Exhibit D. Neither the Juvenile Court nor the Office of Juvenile Probation can locate the form signed by *H.T.*’s mother.

<sup>5</sup> On May 3, 2007, Juvenile Law Center (JLC) entered its appearance as counsel for *H.T.*, filed a timely notice of appeal in the Superior Court, and simultaneously filed motions (*i.e.*, application for supersedes and petition for a writ of habeas corpus) in Luzerne County Juvenile Court seeking *H.T.*’s immediate release. On May 8, 2007, the Juvenile Court granted *H.T.*’s application for supersedes and petition for a writ of habeas corpus, and ordered her immediate release from residential placement. The Juvenile Court also vacated its April 17th delinquency adjudication and disposition orders, and scheduled an adjudicatory

hearings is attached as Exhibit C. H.T. seeks immediate expungement of her juvenile court record.

B. Youth Similarly Situated to Named Applicants

This action is brought on behalf of all youth who appeared, or will in the future appear in delinquency proceedings in the Luzerne County Juvenile Court without legal representation, and without a lawful knowing and intelligent waiver of their right to legal representation, from the time the Rules of Juvenile Court Procedure became effective October 1, 2005.

1. Luzerne County Data Reported to JCJC

Data from the Pennsylvania Juvenile Court Judges' Commission (JCJC)<sup>6</sup> reveal that since this Court issued its Rules of Juvenile Court Procedure, significant numbers of Luzerne County youth have been the subject of juvenile court hearings without counsel. In 2005 and 2006, Luzerne County led the Commonwealth in the percentage of youth adjudicated delinquent without legal representation. See Exhibit E, Affidavit of Linda B. Bender, Director, Juvenile Justice Information and Technology Division of the Center for Juvenile Justice Training and Research, Pennsylvania Juvenile Court Judges' Commission [hereinafter JCJC Affidavit].

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hearing on the Allegation—Complaint for May 16, 2007 appointing JLC as counsel. On the eve of the May 16th hearing the Juvenile Court entered a consent decree. H.T., through JLC, subsequently withdrew her notice of appeal. H.T. completed the terms and conditions of that decree on November 16, 2007. However, the consent decree remains on her record and has not yet been expunged.

<sup>6</sup> The Juvenile Justice Information & Technology Division (Division) of JCJC routinely receives juvenile court statistical data from each county juvenile probation department in the Commonwealth. Each county completes information about the subject of every referral to the juvenile probation department or court. For *every* referral juvenile probation reports the juvenile's name, residence, date of birth, date of arrest, charging information, and outcome (*e.g.*, dismissed, consent decree, probation). Juvenile probation departments are also required to report attorney representation (*i.e.*, court appointed, public defender, private or waived) when a hearing was held before a judge or master.

The data in the above text about Pennsylvania youth who are unrepresented during juvenile court hearings is available to the general public. But Counsel—Juvenile Law Center—is not privy to information identifying juveniles (*e.g.*, name, residence, date of birth). However, Luzerne County Juvenile

In 2005, juveniles appeared without counsel in *fifty* percent of all delinquency dispositions involving hearings in Luzerne County (*i.e.*, 285 hearings without counsel out of 569 dispositions involving hearings before a judge or master), nearly *ten* times the state average (5.9 percent) reported by JCJC. A significant percentage of the hearings without counsel resulted in adjudication and sanctions.<sup>7</sup> According to JCJC, in 2005 nearly half of the delinquency dispositions in Luzerne County that resulted in probation occurred without counsel (*i.e.*, 92 out of 187 juvenile dispositions resulted in probation without counsel), and nearly sixty percent of delinquency dispositions that resulted in out-of-home placement occurred without counsel (*i.e.*, 126 out of 219 juvenile dispositions resulted in placement without counsel). JCJC Affidavit ¶¶ 5-7.

In 2006, the first full year in which Pennsylvania Rules of Juvenile Court Procedure governed delinquency proceedings,<sup>8</sup> more than half the juveniles subject to delinquency hearings in Luzerne County again appeared without counsel. JCJC recorded 281 instances in which youth appeared in Luzerne County Juvenile Court without counsel out of 544 hearings before a judge or master. *Half* the delinquency dispositions in Luzerne County that resulted in probation occurred without counsel (*i.e.*, 85 out of the 171 total juvenile dispositions that resulted in probation), and *sixty percent* of delinquency dispositions that resulted in out-of-home placement

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Probation should be able to identify for this Court and counsel the identities of juveniles who appeared in juvenile court without legal representation. See discussion *infra* at Section III.B.

<sup>7</sup> A juvenile's right to counsel continues during the disposition (sentencing) stage of a delinquency case because Pennsylvania law entitles a juvenile to representation by counsel at all stages of delinquency proceedings. The absence of at one stage does not preclude a juvenile from asserting his right to counsel at a subsequent stage.

<sup>8</sup> Pennsylvania's Rules of Juvenile Court Procedure, including Rules 152 and 407 (prohibiting waiver of counsel and admission without a colloquy) became effective October 1, 2005.

occurred without counsel (*i.e.*, 131 out of the 217 total juvenile dispositions resulted in placement). Id. ¶¶ 9-12.

JCJC data also show that at juvenile court transfer hearings—the stage where the court considers whether to certify that accused juveniles be subject to the adult, criminal justice system because they are not amenable to treatment, supervision and rehabilitation in the juvenile court—the absence of counsel in Luzerne County Juvenile Court dramatically exceeds any other county in the Commonwealth. Although the numbers of Pennsylvanian youth who appear in transfer hearings without counsel is small (*i.e.*, 10 transfer hearings without legal representation in 2005, and 16 transfer hearings without counsel in 2006), Luzerne County accounts for sixty percent of the transfer hearings held in the Commonwealth without counsel for the accused youth. In 2005, six Luzerne County youth lacked legal representation at judicial transfer hearings; and in 2006, ten youth lacked legal representation at judicial transfer hearings. Id.

## 2. Additional Instances of Waiver Based on Information and Belief

In 2007, children in Luzerne County continued to appear in Juvenile Court without counsel. Although JCJC data is not yet available for 2007 juvenile dispositions, in addition to the two named applicants, counsel is directly aware of at least three other youth who appeared in Juvenile Court without counsel. Based on information and belief, each was adjudicated based on his/her un-counseled admission and sanctioned by the Juvenile Court. In none of the cases did the Juvenile Court conduct a colloquy about the consequences of waiving counsel or admitting to the underlying charges.<sup>9</sup>

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<sup>9</sup> The names of the youth herein are abbreviated. Unlike named Petitioners, counsel could not confirm precise dates and circumstances at which these three juveniles appeared in Juvenile Court without legal representation. As noted *infra*, Section III.B., counsel—Juvenile Law Center—does not regularly appear in Luzerne County Juvenile Court, and delinquency adjudications and dispositions are confidential.

*D.W.*, who resides with his parents in Hunlock Creek, was the subject of a delinquency petition. Based on information and belief, the Luzerne County Juvenile Court adjudicated *D.W.* delinquent in September 2007 for two violations of the Controlled Substance, Drug, Device and Cosmetic Act: 35 P.S. § 780-113(a)(31)(i) (possessing a small amount of marijuana for personal use) and 35 P.S. § 780-113(a) (32) (possession of paraphernalia). *D.W.* did not have private counsel, nor was he appointed counsel. Prior to the hearing, *D.W.* was not advised of his right to counsel, nor did the Juvenile Court administer a colloquy with *D.W.* on the record to explain the consequences of waiving counsel. At the conclusion of the evidentiary portion of the hearing the Juvenile Court adjudicated *D.W.* delinquent and placed him on intensive probation for an indeterminate amount of time.

*J.M.*, who resides with his father in Luzerne County, was the subject of a delinquency petition. Based on information and belief, the Luzerne County Juvenile Court adjudicated *J.M.* delinquent, removed him from the custody of his father and committed him to a residential treatment program. At all stages of his delinquency proceedings *J.M.* appeared without counsel.

*S.M.*, who resides with her parents in Luzerne County, was the subject of a dependency petition alleging truancy. Based on information and belief, the Luzerne County Juvenile Court adjudicated *S.M.* dependent, removed her from the custody of her parents, and committed her to a residential treatment program for three months.

C. Respondent

The Honorable Mark A. Ciavarella, President Judge of the Court of Common Pleas of Luzerne County, is assigned to the Juvenile Division and responsible for administering both the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.* (governing proceedings for state involvement in the lives

of children accused of criminal acts) and the Rules of Juvenile Court Procedure promulgated by the Pennsylvania Supreme Court.

D. Applicants' Allegations

As set forth below, the policies and practices of Luzerne County Juvenile Court violate applicants' rights under federal and state law in the following ways:

- In failing to afford applicants the right to counsel at their pre-adjudicatory, adjudicatory and disposition hearings, the Juvenile Court violated applicants' constitutional and statutory rights to counsel as guaranteed by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, and the Pennsylvania Juvenile Act;
- The Juvenile Court violated Pennsylvania Rule of Juvenile Court Procedure 152 by allowing applicants to waive their rights to counsel without conducting a colloquy on the record that made each fully aware of the consequences of proceeding without legal representation, and by allowing applicants' parents (*e.g.*, the mother of H.T.) to waive applicants' right to legal representation via a "Waiver of Counsel" form that does not contain a signature line for the accused juvenile or explain the consequences of proceeding without counsel.
- The Juvenile Court violated applicants' right against self-incrimination by allowing applicants to admit to the facts of delinquency adjudication without conducting a colloquy to determine whether the admission was made voluntarily and knowingly.

In the case at bar, the policies and procedures of Luzerne County Juvenile Court violated the rights of named applicants and juveniles similarly situated. Through this application, named applicants seek to identify past and present violations of constitutional and statutory law that resulted in delinquency adjudications and dispositions for scores of youth in Luzerne County without the assistance of counsel; secure an appropriate remedy; and prevent similar violations at future delinquency proceedings. If this goal is achieved through declaratory relief it will benefit



not only named applicants and similarly situated youth in Luzerne County but also will restore and preserve the integrity of the Commonwealth's juvenile justice system.

E. Relief Sought by Applicants & Similarly Situated Youth

Based on information and belief, since the Rules of Juvenile Court Procedure became effective, hundreds of youth who appear for hearings in Luzerne County Juvenile Court have been and continue to be adjudicated delinquent and sanctioned without the assistance of counsel, and in the absence of a valid waiver or valid admission. Applicants request that this Court (1) order the Luzerne County Juvenile Court to identify to this Court and applicants' counsel every instance, since October 1, 2005, in which a juvenile was subject to a delinquency hearing before a judge or master without legal representation and either adjudicated delinquent or subjected to court supervision; (2) order the Luzerne County Juvenile Court to vacate the adjudication and disposition orders of all youth adjudicated delinquent and sanctioned without legal representation, and who remain in the custody or supervision of the Juvenile Court; (3) order the Juvenile Court to expunge any and all adjudications and dispositions since October 1, 2005 which occurred without legal representation for youth no longer under Juvenile Court supervision; and (4) award reasonable attorneys' fees, as well as such additional or alternative relief as this Court deems just, proper, or equitable.

**III. THE COURT SHOULD EXERCISE KING'S BENCH POWER OR EXTRAORDINARY JURISDICTION OVER THE CASES OF THE NAMED APPLICANTS AND SIMILARLY SITUATED YOUTH BECAUSE THE CASES PRESENT AN ISSUE OF IMMEDIATE PUBLIC IMPORTANCE**

This Court "may, . . . in any matter . . . involving an issue of immediate public importance, assume plenary jurisdiction of such matter at any stage thereof and enter a final

order or otherwise cause right and justice to be done.” 42 Pa.C.S. § 726. *See Commonwealth v. Kline*, 521 Pa. 281, 285 n.3, 555 A.2d 892, 894 n.3 (1989) (exercising plenary jurisdiction pursuant to 42 Pa.C.S. § 726 because issue of whether trial court president judge may order the temporary assignment of a district justice to serve in another magisterial district is of sufficient public importance); *Wilson v. Blake*, 475 Pa. 627, 629 n.1, 381 A.2d 450, 451 n.1 (1977) (assuming plenary jurisdiction to review Common Pleas Court order refusing to permit criminal defendants to tape record preliminary hearing because the issue is one of immediate public importance). The Court also may assume plenary jurisdiction over any matter pursuant to its King’s Bench power preserved in the Pennsylvania Constitution and 42 Pa.C.S. § 502. Where a case is “one of significant public importance” Pennsylvania’s appellate courts may grant a request for “an advanced briefing schedule and expedited disposition.” *Lawless v. Jubelirer*, 789 A.2d 820, 824 n.2 (Pa. Commw.), *aff’d*, 571 Pa. 79, 811 A.2d 974 (2002); Pa. R. App. P. 105(a) (providing that an appellate court, “[i]n the interest of expediting decision,” may “disregard the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction”).

As noted herein, it has been firmly established for forty years that a child has a constitutional right to counsel at any and all stages of a delinquency proceeding where the child’s liberty may be curtailed. *In re Gault*, 387 U.S. 1 (1967); *Gideon v. Wainwright*, 372 U.S. 335 (1963). Applicants urge this Court to ensure compliance with *Gault*’s mandate by exercising plenary jurisdiction over the cases of hundreds of youth who have been adjudicated delinquent and sanctioned without legal representation and based on un-counseled admissions of guilt. In the decades since *Gault*, the scope and importance of the representation of counsel has

been repeatedly recognized and codified in national standards for juvenile court practice.<sup>10</sup>

The Commonwealth will not be irreparably harmed by the relief sought herein. The Commonwealth cannot suffer harm because the Commonwealth has no cognizable legal interest in supporting or participating in judicial proceedings that violate the Constitution, the Juvenile Act, and the Rules of Juvenile Court Procedure. As the United States Supreme Court recognized in Goss v. Lopez, unwarranted violations of constitutional rights promote no interests of the State. 419 U.S. 565, 579 (1975).

Finally, it is in the public's interest that juveniles are tried in a fair and appropriate manner, with the full panoply of constitutional and statutory rights, including the assistance of counsel and admissions of juveniles made voluntarily, knowingly and intelligently. In this case, hundreds of youth have been (and continue to be) adjudicated without these constitutional and statutory rights and it does not serve the interest of the public to adjudicate and sanction them unlawfully.

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<sup>10</sup> See American Council of Chief Defenders & National Juvenile Defender Center, *Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems* (January 2005), available at [www.njdc.info](http://www.njdc.info); Am. Bar Ass'n, *et al.*, *Pennsylvania: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, (recommending that juvenile courts ensure that no juvenile goes unrepresented at any stage of the juvenile court process, and presume indigence for the purpose of appointment of counsel); Inst. of Judicial Admin. & Am. Bar Ass'n, *Juvenile Justice Standards: Standards Relating to Pretrial Court Proceedings* (1980) (calling for the effective assistance of counsel at all stages of the proceeding and advising that the right to counsel should attach as soon as possible, and advocating that the juvenile should have the mandatory and unwaivable right to effective assistance of counsel at all stages of the proceedings); Patricia Puritz, *et al.*, Am. Bar Ass'n Juvenile Justice Center, *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (1995) (standards of representation should guarantee that every juvenile has counsel, that the right to counsel is not waived, and that the juvenile is represented from the earliest stages of the proceeding through post-disposition stages); National Ass'n of Counsel for Children, *NACC Policy Agenda: Juvenile Justice Policy*, adopted May 17, 1997, available at [www.naccchildlaw.org](http://www.naccchildlaw.org) (juveniles accused of offenses should be represented by competent counsel in all court proceedings, including post-disposition proceedings); National Advisory Commission on Criminal Justice Standards, *Juvenile Justice Standards Relating to Interim Status* (1980), Standard 7.6C (right to counsel at each stage of formal juvenile justice process); National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* at 25 (2005) available at [www.ncfcj.org](http://www.ncfcj.org) (holding delinquency judges responsible for providing children with access to counsel at every stage of the proceedings, from before the initial hearing through post-disposition

A. Named Applicants Have No Adequate Remedy At Law

There is no adequate remedy at law available to named applicants. No appeal can be filed in the Superior Court of Pennsylvania for named applicants Van Reeth and H.T. because thirty days have elapsed since the Juvenile Court's disposition (sentencing) orders, and the Superior Court is without jurisdiction to hear an appeal where an appellant has not filed a timely notice of appeal. See Pennsylvania Rule of Appellate Procedure 903(a) (stating "the notice of appeal required by Rule 902 (manner of taking appeal) shall be filed within 30 days after the entry of the order.").

Additionally named applicants cannot raise these claims through a Post-Conviction Relief Action (PCRA) because PCRA does not apply to juveniles. Matter of J.P., 573 A.2d 1057 (Pa. Super. 1990); 42 Pa.C.S.A. § 6354(a) (An order of delinquency "is not a conviction of crime and does not impose any civil disability ordinarily resulting from a conviction."); see also In Interest of DelSignore, 375 A.2d 803, 806 n. 3 (Pa. Super. 1977) (PCRA does not apply to juveniles).

Nor does the Juvenile Act provide for any alternative collateral relief. The absence of a collateral proceeding would require juveniles to rely on a writ of *habeas corpus* in order to effectuate an ineffective assistance of counsel claim. 42 Pa.C.S. §§ 6501 *et seq.* This proceeding, however, is limited to those juveniles who have been detained or placed. Pa.R.J.C.P. 125; 42 Pa.C.S. § 6503. As such, named applicants attempts to initiate a collateral proceeding will be frustrated and their attempts to litigate an absence or ineffectiveness of counsel claims futile. This Court must therefore address Applicant's claims here.

Unless this Court grants extraordinary jurisdiction applicants, and youth similarly situated, will continue to suffer irreparable injuries: transfer to criminal court, adjudication, direct sanctions (*e.g.*, placement in a juvenile residential treatment facility) and collateral consequences from the adjudication (*e.g.*, disqualification from public housing, limited employment opportunity, loss of driving privileges, sentencing in future criminal proceedings).

B. Plenary Jurisdiction Is Necessary to Identify and Obtain Injunctive Relief For Youth Similarly Situated to Named Applicants

Plenary jurisdiction is necessary because it is the only way to identify and obtain relief for scores of youth adjudicated delinquent and sanctioned without the benefit of a lawyer. Based on information and belief, youth appearing in Luzerne County Juvenile Court are not aware of the consequences of waiving their constitutionally protected rights, and when adjudicated delinquent they do not understand their appellate rights. Other than the two named applicants, counsel for applicants cannot identify specific instances of illegal waiver of counsel because counsel does not routinely appear in Luzerne County for delinquency proceedings, and delinquency adjudications and dispositions are confidential. Section 6307 of the Juvenile Act limits access of court files and records to juvenile court staff, parties to the proceeding and their counsel, and treatment staff providing supervision. No other organizations or persons can access juvenile court files and records without permission from the juvenile court.

Applicants request—that this Court order the Luzerne County Juvenile Court to identify to applicants’ counsel every instance since October 1, 2005 in which a juvenile appeared before a judge or master without legal representation and was adjudicated delinquent—is not

burdensome. The Luzerne County Office of Juvenile Probation already documents and reports to JCJC about every juvenile subject to a delinquency hearing, including the juvenile's name, residence, date of birth, date of arrest, charging information, outcome and attorney representation (*i.e.*, court appointed, public defender, private or waived). See JCJC Affidavit ¶ 3. However, without this order, it will be impossible for counsel to identify the scores of youth who have, and will be subject to, irreparable injury: delinquency adjudications without counsel based on uninformed admissions; and, probation or placement in a residential treatment facility.<sup>11</sup>

Moreover, this Court should assume plenary jurisdiction to conserve judicial resources and because this issue is likely to recur. See, e.g., Commonwealth v. Morris, 565 Pa. 1, 18-19, 771 A.2d 721, 731 (2001) (assuming jurisdiction under 42 Pa.C.S. § 726 to determine constitutionality of statute regarding stay of execution because issue was likely to recur, the trial court exceeded its bounds of authority in granting the stay, and the Commonwealth demonstrated its rights). The Court should hear the cases of applicants and similarly situated youth together. See, e.g., Blackwell v. Commonwealth, State Ethics Comm'n, 524 Pa. 403, 404, 573 A.2d 536, 536 (1990) (assuming plenary jurisdiction and consolidating five cases raising the same issue of the retroactivity of decision holding part of the Sunset Act unconstitutional); Commonwealth v. Lutz, 508 Pa. 297, 302, 495 A.2d 928, 930 (1985) (assuming plenary jurisdiction in nine Common Pleas Court cases at various procedural postures and consolidating them for determination of whether a criminal defendant may be admitted to program of accelerated rehabilitative disposition over the Commonwealth's objection).

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<sup>11</sup> Applicants also request that this Court vacate the adjudication and disposition orders of the Luzerne County Juvenile Court for youth who appeared without legal representation and remain in its custody or under its supervision, and order the Luzerne County Juvenile Court to expunge the adjudications and dispositions since October 1, 2005 which occurred without legal representation for youth no longer under juvenile court supervision.

C. Plenary Jurisdiction Is Necessary Because Respondent Has Disregarded Superior Court Precedent

Six years ago, in a case remarkably similar to the instant matter, a unanimous panel of the Pennsylvania Superior Court, citing In re Gault and Section 6337 of the Juvenile Act, vacated Respondent's delinquency adjudication of a juvenile, A.M., because the Juvenile Court failed to inform A.M. of his right to counsel. A.M., like named applicants, admitted to criminal conduct without the benefit of counsel. Even though A.M.'s admission was given in the presence of his parents, the Superior Court reversed. The Superior Court held

[a]n admission, the juvenile equivalent of a guilty plea, is a critical stage at which a respondent must be afforded the right to counsel. ...When a respondent appears without counsel at any stage of a delinquency proceeding, the court has both a constitutional and a statutory duty to inform the child of his right to counsel, and his right to have court appointed counsel if he cannot afford representation.

In re A.M., 766 A.2d 1263, 1264 (Pa. Super. 2001) (citations omitted).

Even if applicants could timely file a notice appeal in the Superior Court, the exercise of plenary jurisdiction by this Court is necessary given Respondent's continued refusal to follow precedent, the laws of this Commonwealth and the Constitution. The January 2007 and May 2007 hearings of applicants Van Reeth and H.T. demonstrate that the policies and practices of Respondent have not changed since the Superior Court's 2001 reversal in In re A.M.. Indeed, Respondent conducted hearings for juveniles D.W., J.M., and S.M. months after Applicant H.T. persuaded the Juvenile Court to vacate her delinquency adjudication. Respondent continues to deny youth the most minimal constitutional protections.

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**IV. APPLICANTS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIM**

A. Applicants Have Both a Constitutional And a Statutory Right To Counsel At All Stages Of Delinquency Proceedings

In failing to afford applicants the right to counsel at their adjudicatory and disposition hearings, the Juvenile Court violated applicants' constitutional and statutory rights to counsel, as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Pennsylvania Juvenile Act. U.S. Const. amd. 14; 42 Pa.C.S. § 6337. Deprivation of the right to counsel can never be harmless error. McKaskle v. Wiggins, 465 U.S. 168, 177 n.8 (1984); Commonwealth v. Payson, 723 A.2d 695, 699-700, 704 (Pa. Super. 1999).

It is well-settled that applicants had the right to counsel at both their adjudicatory and disposition hearings. Forty years ago, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment of the United States Constitution guarantees children who are the subject of delinquency proceedings the right to counsel. Gault, 387 U.S. at 36. The Supreme Court wrote:

A proceeding where the issue is whether the child will be found to be "delinquent" and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child "requires the guiding hand of counsel at every step in the proceedings against him."

Id. (footnotes omitted). See also Gideon v. Wainwright, 372 U.S. 335 (1963); In the Interest of A.M., 766 A.2d 1263, 1264 (Pa. Super. 2001) (holding that juveniles have a constitutional right to counsel in delinquency proceedings); In the Interest of A.P., 617



A.2d 764, 767 (Pa. Super. 1992), *aff'd*, 536 Pa. 450, 639 A.2d 1181 (1994) (same); In the Matter of Brandon Smith, 573 A.2d 1077, 1080 (Pa. Super. 1990) (same); In the Matter of Rochelle Bonner, 447 A.2d 1043, 1045 (Pa. Super. 1982) (same).

In Pennsylvania, a juvenile's constitutional right to counsel has been codified in the Juvenile Act, 42 Pa.C.S. § 6337, which states in relevant part:

[A] party is entitled to representation by legal counsel at all stages of any proceedings under [the Juvenile Act] and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him. *If a party appears without counsel the court shall ascertain whether he knows of his right thereto and to be provided with counsel by the court if applicable.*

Id. (emphasis added).

Thus, when a juvenile appears without counsel at any stage of a delinquency proceeding, the court has both a constitutional and statutory duty to inform the child of her right to counsel and her right to have court-appointed counsel if she cannot afford a lawyer. It is clear that Respondent failed to do so in applicants' cases and potentially scores of other juvenile cases.

B. A Juvenile May Not Waive The Right To Counsel Unless The Court Conducts A Colloquy On The Record That Makes That Youth Fully Aware Of The Consequences Of Waiver

Waiver of a right guaranteed by the United States Constitution, including the right to counsel, is only valid if made with knowledge and intelligence. Payson, 723 A.2d at 700 (citation omitted). As the United States Supreme Court recognized more than 50 years ago, when a defendant appears without counsel

[the Constitutional right to counsel] imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. To discharge this duty properly in light of the strong presumption against waiver of the

constitutional right to counsel, a judge must investigate as long and as thoroughly as the circumstances of the case before him demand.... *To be valid such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter. A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances. . .*

Von Moltke v. Gillies, 332 U.S. 708, 723-24 (1948) (holding that defendant's constitutional right to counsel in a criminal prosecution in federal court was violated where trial court failed to obtain a knowing and intelligent waiver from defendant, who appeared without counsel) (citations and internal quotations omitted) (emphasis added).

Pennsylvania courts have consistently held that in order to make a knowing and intelligent waiver, the respondent must be made aware of both the nature of the right and the risks and consequences of forfeiting it. *See, e.g., Commonwealth v. Starr*, 541 Pa. 564, 581, 664 A.2d 1326, 1335 (1995) (noting that when defendant wishes to proceed pro se, the trial court must conduct a "probing colloquy" into defendant's waiver of counsel, including an inquiry as to whether the defendant understands his right to counsel and is aware of the consequences of waiving that right) (citations omitted); Commonwealth v. Monica, 528 Pa. 266, 273-74, 597 A.2d 600, 603 (1991) (holding that trial court committed reversible error when it allowed defendant to represent himself at trial where court failed to conduct an on-the-record inquiry to determine whether defendant appreciated that he had the right to counsel and the risks of proceeding without counsel ) (citations omitted); Commonwealth v. Ritchey, 431 Pa. 269, 272, 245 A.2d 446, 449 (1968) (vacating conviction where petitioner at time of entry of guilty plea was

not informed of his right to court-appointed counsel if he was indigent and thus waiver of counsel could not have been knowing and intelligent). This requirement is even more important for juveniles given social science research confirming that most youth lack the capacity, on their own, to understand the nature of the high stakes involved in delinquency proceedings and to make intelligent decisions about how to navigate the increasingly complex dimensions of the modern juvenile court.

Concern about a juvenile's comprehension of the consequences of waiving the right to counsel led the Supreme Court of Pennsylvania to require an extensive colloquy in delinquency proceedings. Pennsylvania Rule of Juvenile Court Procedure 152 instructs courts not to permit waiver unless "1) the waiver is knowingly, intelligently, and voluntarily made; and 2) the court conducts a colloquy with the juvenile on the record." The Comment to Rule 152 recommends that courts, at a minimum, elicit:

1. Whether the juvenile understands the right to be represented by counsel;
2. Whether the juvenile understands the nature of the allegations and the elements of each of those allegations;
3. Whether the juvenile is aware of the dispositions, community service, or fines that may be imposed by the court;
4. Whether the juvenile understands that if he or she waives the right to counsel, he or she will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;
5. Whether the juvenile understands that there are possible defenses to these allegations that counsel might be aware of, and if these defenses are not raised at the adjudicatory hearing, they may be lost permanently;
6. Whether the juvenile understands that, in addition to defenses, the juvenile has many rights that, if not timely asserted, may be lost permanently; and if errors occur and are not timely objected to, or

otherwise timely raised by the juvenile, these errors may be lost permanently;

7. Whether the juvenile knows the whereabouts of absent guardians and if they understand they should be present; and
8. Whether the juvenile has had the opportunity to consult with his or her guardian about this decision.

Comment, Pa.R.J.C.P. 152. The recommended colloquy assures a child's full awareness of the consequences of waiver.

Moreover, the presumption is always against the waiver of a constitutional right. Monica, 528 Pa. at 273, 597 A.2d at 603; Payson, 723 A.2d at 700 (citation omitted). Waiver cannot be presumed where the record is silent. The record must clearly demonstrate an informed relinquishment of a known right – the accused was offered counsel but intelligently and understandingly rejected the counsel. Monica, 528 Pa. at 273, 597 A.2d at 603; Commonwealth v. Hill, 492 Pa. 100, 109, 422 A.2d 491, 496 (1980); Payson, 723 A.2d at 700. And where, as in the instant case, the record is silent as to waiver, the Commonwealth has the burden of proving that the defendant voluntarily and knowingly waived a constitutional right. Monica, 528 Pa. at 273, 597 A.2d at 603; Sheehan, 446 Pa. at 44, 285 A.2d at 470 (citation omitted); Ritchey, 431 Pa. at 275-76, 245 A.2d at 450-51 (1968) (citations omitted). The Juvenile Court did not conduct any colloquy with any of the applicants prior to allowing them to waive their right to counsel.

C. Meaningful Exercise of a Youth's Due Process Rights Requires That the Youth Receive the Advice of an Attorney and That Youth, Not Their Parents, Decide Whether to Waive Rights

A waiver of counsel made by a parent is plainly improper. The Pennsylvania Rules of Juvenile Court Procedure specifically instruct that even in the presence of a parent or guardian,

the child must still make the waiver of her right to counsel on her own. Pa.R.J.C.P. 152. “A guardian may never waive the juvenile’s right to counsel.” Comment, Pa.R.J.C.P. 152.

However, as noted above in Section II.A (Applicant H.T.), at the courthouse, prior to the adjudication hearing, H.T.’s mother signed a form, given to her by Luzerne County’s Office of Juvenile Probation, waiving her daughter’s right to counsel.<sup>12</sup> The waiver of counsel form does not contain a signature line for the accused juvenile or explain the consequences of proceeding without counsel. This practice is explicitly prohibited by the Rules of Juvenile Court Procedure. In adopting the Rules of Juvenile Court Procedure, this Court suspended Section 6337’s provision allowing a parent or guardian to waive counsel for his/her child, stating “waiver of counsel belongs to the juvenile and the guardian may not waive the right for the juvenile.” Comment, Pa.R.J.C.P. 152.

1. Empirical Evidence Has Shown that Parents are not Effective Legal Advisors or Advocates for their Children’s Legal Rights

Empirical evidence has shown the degree to which parents are not effective legal advisors or advocates for their children’s legal rights. Parents do not help, and indeed may hurt the child’s chance of understanding and asserting his rights. Thomas Grisso, *Juveniles’ Waiver of Rights: Legal and Psychological Competence* 106 (1981) (comparing juveniles’ and adults’ levels of Miranda comprehension). In one study, Grisso surveyed approximately 750 parents of high school students in two schools in St. Louis, Missouri. Parents were asked to respond to two types of questions. One set of questions asked parents to respond to a hypothetical arrest and

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<sup>12</sup> An unsigned “Waiver of Counsel” Form of Luzerne County Juvenile Court and its Probation Office is attached as Exhibit D. The policy and practice of parent waiver (e.g., Applicant H.T.) *could* be Respondent’s rationale for the absence of defense counsel for other unnamed youth, but counsel cannot confirm whether such a policy is typical unless this Court permits counsel to review juvenile court files to identify other waiver forms. As noted above, however, the policy and practice is plainly improper and illegal.

request to interrogate a youth. The second set of questions elicited parents' attitude regarding an individual's exercises of his/her legal rights through the Children's Rights Attitude Scale. Only 20% of parents believed that juveniles should be able to withhold information from police. More than one-half of the parents disagreed with the idea that juveniles should be allowed to avoid incriminating themselves by withholding information. *Id.* 175-180. In the Grisso study, the most common reason that parents gave for advising youth to cooperate with the police was "moralistic," because they felt that "honesty is the best policy." *Id.* at 180-81. Grisso found that the majority of the time parents offer no advice during an interrogation or instruct children to speak to police and not obtain an attorney. *Id.* at 168-90.

The results imply that, in interrogation situations, parents frequently fail to provide the advice and assistance envisioned by the states when they implemented the interested adult rule. Parents do not offer the advice and counsel the Supreme Court thought would protect children from their own immaturity. In fact, Grisso's research revealed that parental presence does not serve as a substitute for representation.

Kimberly Larson, *Improving the "Kangaroo Courts": A Proposal for Reform in Evaluating Juveniles' Waiver of Miranda*, 48 Vill. L. Rev. 629, 653 (2003). See also Barbara Kaban & Ann E. Tobey, *When Police Question Children, Are Protections Adequate?* 1 J. Center Child. & Cts., 151, 154 (1999) ("[I]t has been anecdotally observed that parents often push their children to 'talk' to authorities and to 'tell the truth.'").

## 2. Parents Cannot Act as Legal Counsel Due to the Inherent Tension Between Parenting Duties and the Duties of an Attorney

Parents are charged with the care and custody of their children as well as their moral upbringing. Parents have the duty to prepare their children for adulthood and this "must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship. Wisconsin v. Yoder, 406 U.S. 205, 233 (1972). This affirmative process of teaching, guiding,

and inspiring by precept and example is essential to the growth of young people into mature, socially responsible citizens. When a parent learns that their child is in trouble they are understandably upset, confused, angry, and embarrassed. They are surely concerned with their child's safety. But as the person responsible for the youth's moral and religious upbringing, parents may feel it is important for the child to cooperate with police and provide all information requested without considering the legal consequences. Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe*, 41 Am. Crim. L. Rev. 1277, 1294, 1295 (2004) [hereinafter Farber]. Parents are not solely concerned with their child's legal rights; indeed, in many instances they are not at all concerned with such legal rights. As one public defender was quoted as saying in an assessment of access and quality of counsel in delinquency proceedings in Ohio, "[t]he kids come in with their parents, who want to get this dealt with as quickly as possible, and they say, 'you did it, admit it.'" Am. Bar Ass'n, et al., *Justice Cut Short: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Ohio*, (March 2003) at 28.

As the Supreme Court reasoned in Fare v. Michael C., 442 U.S. 701 (1979), legal counsel is the vanguard of youth's due process rights in police investigations and delinquency proceedings because attorneys have an expertise that most parents do not. Fare, 442 U.S. at 722. The requirement that youth consult with an attorney in these situations allows parents to act as parents, "unburdened by the potential legal consequences of their advice." Farber at 1279. "Parents may struggle between teaching the child a moral lesson, advocating for the rehabilitative needs of the child, advancing the legal interests of the child, or maybe even protecting the legal and safety interests of neighbors, friends, co-workers who might be affected by the child's delinquent conduct." Kristin Henning, *It Takes a Lawyer to Raise a Child?*

*Allocating Responsibilities Among Parents, Children, and Lawyers in Delinquency Cases*, 6 Nev. L. J. 836, 850 (2006) (citing Model Rules of Prof'l Conduct R. 1.8(f)(3)). The lawyer, on the other hand, has a clearly defined and exclusive role to advise a youth on their legal interests. Farber at 1305-06.

D. A Juvenile Cannot Admit To Allegations of Delinquency Unless The Court Conducts A Colloquy To Determine The Admission Is Made Voluntarily And Knowingly

In addition to violating applicants' right to counsel when accepting their admission in the absence of counsel, the court violated another well-settled principle of constitutional law—admissions from juveniles must be voluntary, knowing, and intelligent. Henderson v. Morgan, 426 U.S. 637, 644-45 (1976); Boykin v. Alabama, 395 U.S. 238, 242-43 (1969). See also Gault, 387 U.S. at 55 (“*If counsel was not present for some permissible reason when an admission was obtained*, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.”) (emphasis added). The constitutional standard for determining whether an admission is voluntarily and intelligently made is the same as that which governs the waiver of any constitutional right – the respondent's admission must be an “intentional relinquishment or abandonment of a known right or privilege.” Commonwealth v. Hines, 496 Pa. 555, 559-60, 437 A.2d 1180, 1182 (1981) (citing Boykin, 395 U.S. at 243 n.5 (internal citation omitted)).

For an admission to be voluntary, knowing, and intelligent under the United States Constitution, a child must be informed, at a minimum, of the following: (1) that she has a right to counsel and to have the court appoint counsel if she can't afford to hire an attorney; (2) that she has the right to remain silent; (3) that she has the right to an evidentiary hearing where she would



have, inter alia, (a) the right to counsel, (b) the right to present evidence, (c) the right to cross-examine government witnesses, (d) the right to challenge the government's evidence, and (e) the right to appeal from a final judgment of the court; (4) that she is presumed innocent until proven guilty by the government; (5) that she would be waiving these constitutional rights if he entered an admission; and (6) the possible dispositions that the court could impose if the child enters an admission. Boykin, 395 U.S. at 243; Hill v. Beyer, 62 F.3d 474, 480-81 (3d Cir. 1995) (citing Boykin, *supra*).

Pennsylvania law is in accord with this standard. See, e.g., Commonwealth v. Hallock, 722 A.2d 180, 182 (Pa. Super. 1998). See also 42 Pa.C.S. § 6338 (stating that party to juvenile proceeding has, inter alia, the right to introduce evidence and cross examine witnesses, and the right against self-incrimination). Furthermore, the Rules of Juvenile Court Procedure direct juvenile courts to elicit specific information to determine if the child's admission is voluntarily and knowingly made:

1. Does the juvenile understand the nature of the allegations to which he or she is admitting?
2. Is there a factual basis for the admission?
3. Does the juvenile understand that he or she has the right to hearing before the judge?
4. Does the juvenile understand that he or she is presumed innocent until found delinquent?
5. Is the juvenile aware of the dispositions that could be imposed?
6. Is the juvenile aware that the judge is not bound by the terms of any agreement tendered unless the judge accepts such agreement?
7. Has the juvenile spoken with his or her attorney or waived the right to counsel in accordance with Rule 152?

8. Does the juvenile have any questions about admitting to the facts or delinquency based on the allegations?
9. Has the juvenile had the opportunity to speak with a guardian about his or her decision?

Pa.R.J.C.P. 407(A)(1). The Comment to Rule 407(A)(1) permits juvenile courts to use a written admission form, provided the questions are asked “on the record” to authenticate the juvenile’s completion and understanding of the form and the juvenile’s agreement with the statements made. Comment, Pa.R.J.C.P. 407. In the instant matter, there is no evidence applicants’ received such colloquies prior to their admissions. They received no paperwork reviewing the consequences of their admissions. Even in the minimal exchange that did take place, the Juvenile Court did not advise any of the applicants of their constitutional rights and that they would be giving up these rights if they entered an admission. The Juvenile Court failed to apprise any youth of the possible dispositions that the court could impose if they pled guilty. Nothing in the record indicated that applicants were elsewhere informed of these rights, or that they understood these rights. Moreover, because applicants were denied the right to counsel, they certainly did not have counsel to explain their rights and the possible consequences they faced by admitting their involvement. Nor do applicants believe such colloquies have been undertaken in the hundreds of other cases in which similarly situated juveniles have likewise appeared without counsel in Luzerne County Juvenile Court, entered admissions, and been placed on probation or committed to residential programs without the assistance or participation of counsel.

## CONCLUSION

WHEREFORE, applicants and similarly situated youth pray that this Court exercise its King's Bench Power or extraordinary jurisdiction and issue relief that causes right and justice to be done. Because the adjudicatory and disposition proceedings at issue in Luzerne County Juvenile Court have been, and continue to be constitutionally and statutorily infirm, applicants respectfully request that this Court take jurisdiction of this matter to identify every instance, since the Rules of Juvenile Court Procedure became effective on October 1, 2005, in which a juvenile was subject of a delinquency hearing before a Judge or Master of the Luzerne County Juvenile Court without legal representation and either adjudicated delinquent or subjected to court supervision; issue appropriate relief to those youth who lacked counsel, and remain in the custody or under the supervision of the Juvenile Court; order the Juvenile Court to expunge all adjudications and dispositions since October 1, 2005 which occurred without legal representation for youth no longer under Juvenile Court supervision; and award reasonable attorneys' fees, as well as such additional or alternative relief as this Court deems just, proper, or equitable.

Respectfully submitted,

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Laval S. Miller-Wilson, Esq.  
Marsha L. Levick, Esq.  
Mia Carpiniello, Esq.  
JUVENILE LAW CENTER

# **EXHIBIT A**

**IN THE SUPREME COURT FOR THE  
COMMONWEALTH OF PENNSYLVANIA**

**IN SUPPORT OF A PETITION FOR EXTRAORDINARY RELIEF  
CHALLENGING THE POLICIES & PRACTICES OF ADJUDICATING YOUTH  
DELINQUENT WITHOUT COUNSEL BY THE LUZERNE COUNTY COURT OF  
COMMON PLEAS–JUVENILE DIVISION**

**AFFIDAVIT OF JESSICA VAN REETH**

Jessica Van Reeth, being duly sworn, hereby deposes and states as follows:

1. I am eighteen years old, born on February 6, 1990, and the daughter of Jack and Toni Van Reeth.
2. I live at 104 South Mountain Boulevard, Mountain Top Pennsylvania 18702.
3. During the 2006-2007 school year I was enrolled in the eleventh grade at Crestwood High School located in Mountain Top, Pennsylvania.
4. In October 2006 I received a 10-day out-of-school suspension by the assistant principal for possessing a lighter and a pipe. Prior to this incident I was an above average student. I received B's in all my classes. I had never received a reprimand or detention.
5. Although I told the school's assistant principal that I owned the pipe, this was not true. The lighter and the pipe were not mine. Earlier that day I held them for a friend who gave them, to me in the girls' bathroom. At that moment several of the girls who were in the girls' bathroom were escorted to the principal's office by school staff.
6. Before this event I had not had any prior contact with law enforcement. I had never been arrested.

7. The next day my mother went to the Township's police station at 65 Shady Tree Drive in Mountain Top Pennsylvania. At the police station she asked about whether I could get a lawyer. A police officer gave us the phone number for the public defender's office, but we were also discouraged from calling the public defender because our family income was probably too high and that we would not qualify. The Fairview Township Police also told us I would likely receive nothing more than probation.
8. In November 2006 my parents received a letter the Probation Department of Luzerne County stating probation had received an allegation from the Fairview Police that I was a delinquent child and asking them and me to attend an "intake interview" at Juvenile Probation in Wilkes-Barre on December date, 2006. The letter said we had the right to be represented by an attorney at the interview.
9. In December 2006 my father accompanied me to my intake interview at Luzerne County Juvenile Probation. We were not accompanied by counsel. We were interviewed separately.
10. During my interview the juvenile probation told me I was charged with possession of possession of drug paraphernalia in October 2006 at Crestwood High. I admitted possessing the lighter and pipe. The juvenile probation officer asked me questions about other subjects (i.e., school, home, drug use). I told the officer I did not use drugs, and that had never been in trouble at school or with the police prior to this incident. At the conclusion of the interview the juvenile probation officer told me he would not recommend placement, but we were told we needed to appear for an adjudicatory hearing the following month.

11. After the intake interview I received a summons from Juvenile Probation commanding me to appear before the Judge of Juvenile Court on Tuesday, January 30, 2007 for an adjudicatory hearing.
12. On January 30, 2007 I appeared in Juvenile Court, accompanied by my father.
13. Neither prior to nor during my court appearance no one asked me whether I was accompanied by counsel or whether I understood that I had the right to be represented by an attorney.
14. Upon entering the reception area for juvenile court, I identified myself to juvenile probation. I did not sign any papers waiving my right to counsel.
15. Although there were several families in attendance waiting to be heard by Judge Ciavarella, my case was called first.
16. My father accompanied me to the bar of the court. We stood and the only other persons at the bar were the Assistant Principal of Crestwood High School, Bonnie Gregory; the arresting Police Officer from Fairview Township; and my case worker from Camp Adams.
17. The hearing began without anyone, including Judge Ciavarella, asking anything about my right to be represented by counsel. No one asked whether I understood my right to be represented by counsel.
18. A court officer read the charges, and asked me how I intended to plead. No one asked me whether I understood my right to contest the charges, whether I understood the consequences of my admission, or whether I had discussed my admission with my parents or a lawyer.
19. I replied "guilty."

20. Judge Ciavarella immediately asked me whether I remembered his speech at the school assembly at the beginning of the school year. Judge Ciavarella reminded me that he said, “if anyone from Crestwood appeared before him he would send them away” and that’s what he intended to do with me. Judge Ciavarella did not tell me where I would be going. He just said I was going away.
21. I was immediately handcuffed, and escorted out of the courtroom to a small waiting room by a sheriff. I did not have a chance to say good-bye to my father.
22. I was in the small waiting room alone for several minutes when I requested a urine test to prove that I had not used any drugs. The urine test came up negative for any drugs or illegal substances.
23. Later, my case worker Ms. Sara entered the room and asked me to sign some papers. When I began reading the papers, she told me not to read them. I responded saying that I refuse to sign the document without reading it first. When I asked what would happen if I did not sign the papers the officer replied “then the judge will sign them for you.”
24. I was placed at Camp Adams for three months.
25. I was not allowed to see my parents for the first two weeks.
26. At Camp Adams I did all the assigned school work and received excellent marks. I was never in trouble and did not receive any negative write-ups.
27. When I asked my counselors whether I could get out early for good behavior they replied no because I was ordered to remain in placement for three months.



28. At Camp Adams I met other several other girls from Luzerne County who also appeared before Judge Ciavarella without counsel, adjudicated delinquent and placed.
29. I was released from Camp Adams on April 26, 2007.
30. After my release I was placed on intensive probation for three months, and my driver's permit was taken away. The conditions of my probation were to
- a. attend Drug and Alcohol counseling in Wilkes-Barre six hours a week for ten weeks,
  - b. attend regular weekly counseling at school and at home,
  - c. cooperate with home visits from Juvenile Probation three times a week,
  - d. submit weekly urine samples,
  - e. observe weekly curfew during the school year and during the summer, and
  - f. pay for court costs associated with probation.
31. I did not violate any of the terms of my probation.
32. After my release from residential placement I had a review hearing before Judge Ciavarella. At those hearings I did not have counsel and was never informed of my right to counsel.
33. I returned to Crestwood High School but had lots of difficulty. I did not receive credit for the work I missed during my three month placement in Camp Adams for one of my classes. I worked very hard to catch-up. I completed mandatory research project that the students at Crestwood High School are required to do in order to pass the 11<sup>th</sup> grade. This project takes most students 3 months to complete, because of the deficient computers at Camp Adams, I was not able to complete it, or do anything other than my bibliography while I was at Camp Adams. I was forced to complete the entire project in 1 month, and completed the eleventh grade with a B average.

34. Juvenile Court involvement ended September, 17 2007.
35. Based on my experiences in Luzerne County Juvenile Court—as a person adjudicated delinquent, placed in residential placement with other youth from Luzerne County, and ordered to attend group therapy sessions with other adjudicated youth—I believe there are other young people—like me—who admitted to criminal activity without the benefit of counsel.

s/ JVR  
Jessica Van Reeth

## CONCLUSION

WHEREFORE, applicants and similarly situated youth pray that this Court exercise its King's Bench Power or extraordinary jurisdiction and issue relief that causes right and justice to be done. Because the adjudicatory and disposition proceedings at issue in Luzerne County Juvenile Court have been, and continue to be constitutionally and statutorily infirm, applicants respectfully request that this Court take jurisdiction of this matter to identify every instance, since the Rules of Juvenile Court Procedure became effective on October 1, 2005, in which a juvenile was subject of a delinquency hearing before a Judge or Master of the Luzerne County Juvenile Court without legal representation and either adjudicated delinquent or subjected to court supervision; issue appropriate relief to those youth who lacked counsel, and remain in the custody or under the supervision of the Juvenile Court; order the Juvenile Court to expunge all adjudications and dispositions since October 1, 2005 which occurred without legal representation for youth no longer under Juvenile Court supervision; and award reasonable attorneys' fees, as well as such additional or alternative relief as this Court deems just, proper, or equitable.

Respectfully submitted,

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Laval S. Miller-Wilson, Esq.  
Marsha L. Levick, Esq.  
Mia Carpiniello, Esq.  
JUVENILE LAW CENTER

# **EXHIBIT B**

**IN THE SUPREME COURT FOR THE  
COMMONWEALTH OF PENNSYLVANIA**

**IN SUPPORT OF A PETITION FOR EXTRAORDINARY RELIEF  
CHALLENGING THE POLICIES & PRACTICES OF ADJUDICATING YOUTH  
DELINQUENT WITHOUT COUNSEL BY THE LUZERNE COUNTY COURT OF  
COMMON PLEAS–JUVENILE DIVISION**

**AFFIDAVIT OF JACK VAN REETH**

Jack Van Reeth, being duly sworn, hereby deposes and states as follows:

1. I am the father of Jessica Van Reeth.
2. I live at 104 South Mountain Boulevard, Mountain Top Pennsylvania 18702.
3. In October 2006 Jessica received a 10-day out-of-school suspension for possessing a lighter and a pipe. Prior to this incident Jessica was an above-average student. She had never received a reprimand or detention at Crestwood High School.
4. In November 2006 we received a letter from the Juvenile Probation Department of Luzerne County asking us to attend an intake hearing at the Department based on the allegation of the Fairview Police Department that Jessica possessed drug paraphernalia on school property in October 2006. The letter said we had the right to be represented by an attorney at the interview.
5. Prior to receiving this summons Jessica had not had any prior contact with law enforcement.
6. In December 2006 I accompanied Jessica to her intake interview at Luzerne County Juvenile Probation, and unaccompanied by counsel.
7. We were interviewed separately.

8. At the conclusion of my interview the Juvenile Probation Officer told me we needed to appear for an adjudicatory hearing in January 2007. She told me we did have the right to bring an attorney to that hearing. I do not recall signing any forms waiving Jessica's right to counsel.
9. The Juvenile Probation Officer also said she would recommend probation because Jessica is a first-time offender, has good grades and seems like a good kid.
10. On January 30, 2007 I accompanied Jessica to her adjudicatory hearing. Upon entering the reception area for Juvenile Court, we identified ourselves to juvenile probation. No one asked us whether Jessica was represented by counsel or whether we understood she had the right to be represented by an attorney. I do not recall signing any papers waiving Jessica's right to counsel.
11. Jessica's case was called first.
12. The Hon. Mark Ciavarella was the presiding judge.
13. The entire adjudicatory hearing did not last longer than ninety seconds.
14. No one was sworn-in. Judge Ciavarella never acknowledged my presence. He never even looked at me. His entire focus was on Jessica.
15. There was no mention about Jessica's right to be represented by counsel, and after she admitted to the charges Judge Ciavarella immediately moved to disposition.
16. He asked Jessica whether she recalled hearing his presentation at Crestwood High School. He asked her what he said about drugs, and he asked her what she thought he was going to do. When she replied, hesitantly, that he said he would send her away, he agreed, adding he did not feel bad because he tells students

he'll send them away if they appear before him on drug charges. He then ordered Jessica her into placement immediately. I don't recall where.

17. I was stunned by the outcome. We were not prepared for Jessica to be placed. I was not allowed to say good-bye.

18. I was directed out of the courtroom and met with a case worker from the residential facility who told me Jessica would be placed for three months in Camp Adams, a residential facility sixty miles away from our home.

s/J.V.R.  
Jack Van Reeth

# **EXHIBIT C**



IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY

11th JUDICIAL DISTRICT

JUVENILE SECTION

IN THE INTEREST OF:

:

:

Juvenile No. [REDACTED]

H.T., a juvenile

:

TRANSCRIPT OF PROCEEDINGS

BEFORE:

THE HONORABLE MARK A. CIAVARELLA, JR., P.J.  
Penn Place Building  
Third Floor  
Wilkes-Barre, Pennsylvania

Commencing [REDACTED] 2007

APPEARANCES:

-- ON BEHALF OF THE COMMONWEALTH:

THOMAS KILLINO, Esquire

-- ON BEHALF OF THE JUVENILE:

Unrepresented

C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately to the best of my ability in the notes taken by me on the juvenile matter in the above cause, and that this is a true and correct transcript.

5-10-07  
Date

Lisa L. Tratthen  
Lisa L. Tratthen, RPR  
Official Court Reporter

The foregoing record of the proceedings upon the juvenile matter in the above cause is hereby approved and directed to be filed.

\_\_\_\_\_  
Date

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Mark A. Ciavarella, Jr., P.J.

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JUVENILE OFFICER: Case No. [REDACTED]

[REDACTED] all parties please step forward.

(Whereupon, all parties were sworn en masse.)

THE COURT: [REDACTED] you've been charged with harassment, how do you wish to plead?

THE JUVENILE: Guilty.

THE COURT: Based upon her admission, I'll adjudicate her delinquent.

What makes you think you have the right to do this kind of crap?

THE JUVENILE: I don't, sir.

THE COURT: Why would you do this?

THE JUVENILE: I have no rationale explanation for that. I --

THE COURT: Did Miss [REDACTED] ever do anything to you?

THE JUVENILE: Not personally, no. I didn't take into consideration that Miss [REDACTED] is a person as opposed to just a school administration member at my school.

THE COURT: How long have you been at Crestwood?

THE JUVENILE: A year and a half.

THE COURT: What grade are you in?

1 THE JUVENILE: I'm in my sophomore year,  
2 tenth grade.

3 THE COURT: Where did you go before?

4 THE JUVENILE: Pocono Mountain East High  
5 School.

6 THE COURT: You've been at Crestwood when  
7 I've been at Crestwood?

8 THE JUVENILE: Yes.

9 THE COURT: You heard me speak?

10 THE JUVENILE: Yes.

11 THE COURT: Told you what type of conduct  
12 I expected from children in that school  
13 relative to the juvenile justice system?

14 THE JUVENILE: Yes, sir.

15 THE COURT: Told you what conduct I  
16 expected from the students in that school  
17 relative to their conduct towards teachers?

18 THE JUVENILE: Yes, sir.

19 THE COURT: Is this acceptable?

20 THE JUVENILE: No, sir.

21 THE COURT: What did I say would happen if  
22 you acted in an unacceptable way towards  
23 teachers and/or administrators?

24 THE JUVENILE: I don't recall, sir.

25 THE COURT: You don't recall? You don't

1 remember me saying that if you did any of  
2 these things to a teacher, that I would send  
3 you away? You don't remember those words?

4 THE JUVENILE: No, sir.

5 THE COURT: Were you sleeping?.

6 THE JUVENILE: No, sir.

7 THE COURT: You can't remember that?

8 THE JUVENILE: No, sir.

9 THE COURT: It's going to come back to you  
10 because I didn't go to that school, I didn't  
11 walk into that school and I didn't speak to  
12 that student body just to scare you, just to  
13 blow smoke, just to make you think that I  
14 would do that when I wouldn't. I'm a man of  
15 my word. You're gone. Send her up to FACT.  
16 Let her stay there until she figures it out.  
17 Thank you.

18 MOTHER OF JUVENILE: No, that's not fair.  
19 That's not what the officer said. That's not  
20 what he said.

21 THE COURT: Thank you.

22 (Whereupon, the proceedings were  
23 concluded.)  
24  
25

# **EXHIBIT D**

PROSECUTOR OFFICE  
and  
JUVENILE COURT  
11<sup>TH</sup> JUDICIAL DISTRICT  
PENNSYLVANIA COURT OF COMMON PLEAS  
COUNTY OF LUZERNE

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Waiver of Right to Counsel

I am aware I have the right to counsel in the juvenile matter before the Court. I have consulted and been advised by a responsible adult who is aware of the fifth and sixth amendment rights guaranteed to me by the United States Constitution.

I AM WAIVING MY RIGHT TO COUNSEL.

\_\_\_\_\_  
Name of Juvenile

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Advising Adult

\_\_\_\_\_  
Date

Relationship to Juvenile: \_\_\_\_\_

I have no conflict of interest in the juvenile matter before the Court and have advised the juvenile to waive counsel without bias.

\_\_\_\_\_  
Name of Advising Adult

\_\_\_\_\_  
Date

*The Court has reviewed the waiver of counsel statement with the juvenile and is permitting the case to proceed to hearing.*

BY THE COURT,

\_\_\_\_\_  
J.

# **EXHIBIT E**



**IN THE SUPREME COURT FOR THE  
COMMONWEALTH OF PENNSYLVANIA**

IN SUPPORT OF A PETITION FOR EXTRAORDINARY RELIEF  
CHALLENGING THE POLICIES & PRACTICES OF ADJUDICATING YOUTH  
DELINQUENT WITHOUT COUNSEL BY THE LUZERNE COUNTY COURT OF  
COMMON PLEAS–JUVENILE DIVISION

Affidavit of Linda B. Bender, Director  
Juvenile Justice Information and Technology Division, Center for Juvenile Justice  
Training and Research, Pennsylvania Juvenile Court Judges' Commission

Linda Bender, being duly sworn, hereby deposes and states as follows:

*Background*

1. I am the Director of the Juvenile Justice Information and Technology Division (ITD) of the Center for Juvenile Justice Training and Research (CJJT&R) of the Pennsylvania Juvenile Court Judges' Commission (JCJC).
2. The JCJC through the ITD is responsible for the collection, compilation, and publication of juvenile court statistics for the Commonwealth. These statistics are used to analyze the functioning of juvenile courts and to develop long-range plans for future court operations.
3. Based on information received by the ITD from each county juvenile probation department in the Commonwealth, the JCJC publishes an annual dispositional report, *Pennsylvania Juvenile Court Dispositions*. For every written allegation, juvenile probation departments report the juvenile's name, residence, date of birth, date of arrest, charging information, hearing information, and outcome (*e.g.*, dismissed, consent decree, probation). Juvenile probation departments are also required by the JCJC to report type of attorney representation (*i.e.*, court appointed, public defender, private or waived) when a hearing was held before a judge or master.
4. JCJC's annual report on juvenile court dispositions in Pennsylvania, *Pennsylvania Juvenile Court Dispositions*, summarizes data regarding attorney representation in juvenile cases involving a hearing before a judge or master. In the published data, attorney representation is not reported for informally handled allegations, disposition and placement reviews, and dependency case dispositions.

*2005 Data About Attorney Representation in Luzerne County Court  
And Throughout the Commonwealth*

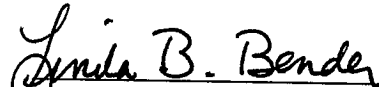
5. As published in *Pennsylvania Juvenile Court Dispositions, 2005*, counties reported to the ITD that, in 2005, juveniles appeared without counsel in 5.9 percent of all delinquency dispositions involving hearings in the Commonwealth of Pennsylvania (*i.e.*, 1,625 of 27,528). In 2005, eighteen percent of all reported waivers of counsel in dispositions involving hearings in the Commonwealth (*i.e.*, 285 of 1,625) occurred in Luzerne County.
6. An analysis of the 2005 attorney representation data, as reported to the ITD by the Luzerne County Juvenile Probation Department, indicated that juveniles appeared without counsel in fifty percent of all delinquency dispositions involving hearings (*i.e.*, 285 of 569).
7. In 2005, the Luzerne County Juvenile Probation Department reported that forty-nine percent of the delinquency dispositions that resulted in probation (*i.e.*, 92 of 187), occurred without counsel and nearly sixty percent of delinquency dispositions that resulted in out-of-home placement (126 of 219) occurred without counsel.
8. As published in *Pennsylvania Juvenile Court Dispositions, 2005*, counties reported to the ITD that throughout the Commonwealth, *ten* youth were subject to hearings involving a request to transfer their cases for criminal prosecution without defense counsel in 2005. Data reported by the Luzerne County Juvenile Probation Department indicates that six of those hearings occurred in Luzerne County.

*2006 Data About Attorney Representation in Luzerne County Court  
And Throughout the Commonwealth*

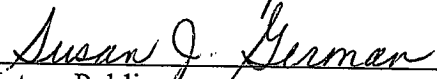
9. As published in *Pennsylvania Juvenile Court Dispositions, 2006* (released in January, 2008), counties reported to the ITD that, in 2006, juveniles appeared without counsel in 5.6 percent of all delinquency dispositions involving hearings in the Commonwealth of Pennsylvania (*i.e.*, 1,496 of 26,896). In 2006, nineteen percent of all reported waivers of counsel in dispositions involving hearings in the Commonwealth (*i.e.*, 281 of 1,496) occurred in Luzerne County.
10. Luzerne County accounted for less than three percent of all 2006 delinquency dispositions reported to the JCJC. It accounted for the largest percentage of cases resulting in an adjudication of delinquency occurring without legal representation. (*i.e.* 235 of 660).
11. An analysis of the 2006 attorney representation data, reported to the ITD by Luzerne County Juvenile Probation Department, indicates that juveniles appeared

without counsel in fifty-two percent of all delinquency dispositions involving court hearings in Luzerne County (*i.e.*, 281 of 544).

12. In 2006, the data reported by Luzerne County Juvenile Probation Department indicates that fifty percent of the delinquency dispositions that resulted in probation (*i.e.*, 85 of 171) occurred without counsel, and sixty percent of delinquency dispositions that resulted in out-of-home placement (*i.e.*, 131 of 217) occurred without counsel.
13. As published in *Pennsylvania Juvenile Court Dispositions, 2006*, counties reported to the ITD that throughout the Commonwealth, *sixteen* youth were subject to hearings involving a request to transfer their cases for criminal prosecution without counsel in 2006. Data reported by the Luzerne County Juvenile Probation Department indicates that 10 of those hearings occurred in Luzerne County.

  
Linda B. Bender

Sworn to and subscribed before me  
this 18th day of April, 2008

  
Notary Public

