

LESSONS FROM LUZERNE COUNTY: RIGHT TO COUNSEL

The Interbranch Commission on Juvenile Justice reported that **54 percent of Luzerne County youth “waived” their right to counsel** annually between 2003-2008 when former judge Mark Ciavarella presided in juvenile court. This waiver rate was **more than ten times the state average**. Sixty percent of these youth were sent to out-of-home, residential placements.

The United States Supreme Court held in the landmark 1967 decision *In re Gault* that children have a constitutional right to counsel in delinquency proceedings. The Pennsylvania Juvenile Act requires counsel for juveniles at every stage of the court process.

Establish an unwaivable right to counsel for juveniles.

- Children are unlikely to comprehend either the immediate or potential future consequences of waiving counsel in a juvenile court proceeding. Few children could satisfy the “knowing, intelligent, and voluntary” standard required to sustain a waiver of counsel in delinquency proceedings. They are prevented from voting, serving in the military or even purchasing cigarettes for this very reason. Given the high stakes as well as the complex, life-altering legal considerations of waiving counsel, Juvenile Law Center recommends an unwaivable right to counsel.
- An unwaivable right to counsel is simpler, more efficient, and more cost effective than requiring consultation and appointment of stand-by counsel prior to waiving counsel. A “standby counsel” proposal will not only prove costly and inefficient; it also fails to provide youth with advice from attorneys who know them and are committed to their interests.
- Counties will still have to pay for standby counsel. Many youth, after receiving advice from the paid standby counsel, will understand the need for court-appointed counsel, and decline to waive counsel. No costs are saved from a standby counsel system. Whether youth waive counsel or not, counsel must be appointed for each child. Proceedings will be drawn out. Standby counsel will merely give the appearance of reform without producing necessary systemic changes.
- Given the low average annual rate of waiver across the Commonwealth (under 5 percent), having an unwaivable right to counsel will not be a financial burden.

Establish a state-based funding stream for juvenile indigent defense (children typically cannot afford or hire attorneys).

- Despite its obligation under the Fourteenth Amendment to enforce a child’s constitutionally guaranteed right to counsel in delinquency proceedings, Pennsylvania is the only state in the nation that provides no state money for indigent juvenile defense.
- Without state funding, the delivery of legal services to indigent youth is a patchwork of disparate county funding schemes, where the quality and effectiveness of legal representation is dependent upon where you live and the amount of resources the county dedicated to this function. Nearly 60 percent of juvenile defenders in Pennsylvania report a severe lack of resources, creating caseloads

well above the recommended national standards and limiting their ability to effectively represent their clients.

- County budgets must cover all expenses for both adult and juvenile indigent defense – including public defender and court-appointed counsel for the accused, court support staff, and building and operation costs. At one time counties were able to seek reimbursement from the Department of Public Welfare, but DPW no longer provides reimbursement for delinquency counsel.

Deem all children indigent for the purpose of appointing counsel.

- The Juvenile Court Procedural Rules Committee of the Pennsylvania Supreme Court recently proposed a rule that presumes indigence for all youth for the purposes of appointing counsel in juvenile court hearings. An unchangeable presumption of indigence should be adopted by the Rules Committee and should also be included in the Pennsylvania Juvenile Act.
- Young people who are alleged delinquent have a constitutional right to counsel that should not be denied them because of the financial resources of their parents.
- Financial pressures may lead parents to encourage their children to ignore their right to counsel in an effort to seek a low-cost resolution, placing parents and children in the difficult position of trying to assess the “worth” of the child’s right against the expense.
- Presuming indigence for accused youth may appear to be costly to counties who are required to finance their public defender systems, but in fact, many counties in Pennsylvania already presume indigence for juveniles and assign them counsel without requesting any family financial information. **Furthermore, cost cannot justify the denial of a constitutional right.**