



May 15, 2017

Jess Mosser, Esq.
Staff Liaison, Commission on Rules of Practice & Procedure
Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215-3431

Dear Ms. Mosser:

The National Juvenile Defender Center (NJDC) supports the proposed modification to Ohio's Juvenile Rule 3, submitted today by the Children's Law Center, Inc., the ACLU of Ohio, and the Office of the Ohio Public Defender. The proposed changes call for all youth in juvenile court to have a meaningful opportunity to consult with a lawyer about their right to counsel, regardless of whether they face a felony or misdemeanor allegation. The modifications to Ohio Juvenile Rule 3 are in line with national best practices and developmentally-appropriate juvenile court systems and will significantly improve the provision of justice for children in Ohio.

NJDC is a nonprofit, nonpartisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. Through community building, training, and policy reform, NJDC provides national leadership on juvenile defense issues with a particular focus on remedying the deprivation of children's rights in the justice system.

Today, exactly 50 years after the United States Supreme Court decision in *In re Gault*¹ affirmed the constitutional right to counsel for youth in delinquency proceedings, NJDC released a report, *Access Denied: A National Snapshot of States' Failure to Protect Children's Right to Counsel (Snapshot)*.² The *Snapshot* reveals that most states have yet to uphold the promise of *Gault* and continue to place barriers between children and their right to counsel.

Given the dual injustices imposed on children by violating their civil rights through disparate enforcement practices and their due process rights through denial of access to effective counsel, it is more critical than ever that states take action to further protect children's rights. Juvenile defenders are critical to ensuring children's constitutional rights are upheld. Yet, in many jurisdictions, children routinely waive their right to counsel without first consulting with an attorney. Countless youth across the country are encouraged to waive their right to counsel without adequate knowledge of the benefits of legal representation.³ As part of our work, NJDC conducts in-depth assessments of statewide juvenile defense systems. In 62 percent of states assessed to date, we have observed excessive waiver of counsel rates due in large part to youth not having access to

¹ *In Re Gault*, 387 U.S. 1 (1967)

² NAT'L JUVENILE DEFENDER CTR., *ACCESS DENIED: A NATIONAL SNAPSHOT OF STATES' FAILURE TO PROTECT CHILDREN'S RIGHT TO COUNSEL* (2017).

³ NAT'L JUVENILE DEFENDER CTR., *DEFEND CHILDREN: A BLUEPRINT FOR EFFECTIVE JUVENILE DEFENDER SERVICES AT 12* (2016) (CITING U.S. DEP'T OF JUSTICE STATEMENT OF INTEREST FOR N.P. ET AL. V. GEORGIA, NO. 2014-CV-241025 AT 12-15 (GA. SUPER. CT. 2014))

lawyers prior to making the decision to waive that right.⁴ Such rampant juvenile waiver of counsel impedes fairness and justice for children.

The current version of Ohio's Juv. Rule 3 requires youth consult with an attorney before waiving the right to counsel only in felony cases. While this likely reflects attempts to protect the rights of children who are at greater risk of incarceration, it is a false distinction.⁵ Children of all ages who are charged with any offense must understand their right to counsel and can, at almost any point, face incarceration.

In the course of conducting research for *Access Denied*, NJDC found that in a majority of states where children are required to consult with an attorney before waiving their right to counsel, waiver of that right is the rare exception, rather than a regular occurrence.⁶

On the 50th Anniversary of the *In re Gault* decision, NJDC respectfully requests that the Supreme Court of Ohio's Commission on the Rules of Practice and Procedure adopt the proposed changes to Juvenile Rule 3, thereby ensuring that a child's constitutional right to counsel is upheld across the State of Ohio.

Sincerely,



Mary Ann Scali
Executive Director

"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."
- *In re Gault*, 387 U.S. 1, 36 (1967)

⁴ *Id.* at 10; See generally *State Assessments*, NAT'L JUVENILE DEFENDER CTR., <http://njdc.info/our-work/juvenile-indigent-defense-assessments/> (last visited Apr. 11, 2017).

⁵ NAT'L JUVENILE DEFENDER CTR., *ACCESS DENIED: A NATIONAL SNAPSHOT OF STATES' FAILURE TO PROTECT CHILDREN'S RIGHT TO COUNSEL*, 26 (2017).

⁶ *Id.* at 27.