May 10, 2013

Lilia G. Judson, Executive Director
Indiana Supreme Court
Division of State Court Administration
30 South Meridian Street, Suite 500
Indianapolis, IN 46204

Dear Ms. Judson:

The National Juvenile Defender Center (NJDC) supports the Indiana Supreme Court's Juvenile Appointment of Counsel Rule Amendment. The Amendment strengthens and clarifies the language related to appointment of counsel and provides for consultation with an attorney before a juvenile may waive his or her right to an attorney. The Amendment follows the recent trend of states protecting the due process rights of youth. NJDC supports the Amendment because through it, Indiana law remains consistent with youth's Constitutional right to counsel, as mandated by *In re Gault* and its progeny. Moreover, the Amendment helps protect the integrity of Indiana's juvenile justice system.

The National Juvenile Defender Center strives to ensure excellence in juvenile defense and promote justice for all children. To that end, NJDC provides technical assistance, training, and support to juvenile defenders across the country. NJDC believes that all youth have the right to zealous, well-resourced representation. NJDC acknowledges the unique and special status of childhood and the impact that immaturity, disabilities, or trauma may have on that representation. NJDC works to improve access to and quality of counsel for all young people in delinquency court, and supports the reform of court systems that negatively impact our nation's youth.

Constitutional Right to Counsel

The proposed Rule Amendment, guaranteeing early appointment of counsel and a mandate that youth consult with an attorney prior to waiver of counsel, serves to ensure that children are provided with meaningful access to counsel and are able to make informed decisions about their legal representation, as guaranteed by the United States Constitution and Indiana State law.[1] According to the United States Supreme Court, juveniles need "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 [they have] a defense and to prepare and submit it."[2] As the Court also recognized eighty years ago: "Even the intelligent and educated layman…requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect."[3] Thus, the aid of counsel is vital to an adequate defense, particularly for juveniles, but it is rendered meaningless if provided too late in the delinquency process.

[1] *See N.M. v. State*, 791 N.E.2d 802, 805 (Ind. Ct. App. 2003) (internal citations omitted).
[2] *In Re Gault*, 387 U.S. 1, 36 (1967).
[3] *Powell v. Alabama*, 287 U.S. 45, 69 (1932).

The Problem of Late Appointment of Counsel

Indiana can only protect the pre-trial procedural rights of young people by ensuring early appointment of counsel. The earlier counsel can meet with their clients, the more likely it is that young people will remain informed throughout the trial process. Early involvement by counsel demonstrates a commitment to the client, improves the attorney-client relationship, and ensures that the youth receives the best representation possible.[4] Indeed, according to the National Council of Juvenile and Family Court Judges (NCJFCJ), "[d]elays in the appointment of counsel create less effective juvenile delinquency court systems."[5] Late appointment prevents youth from hearing the lawyer's advice and information regarding pending trial stages, their own rights, and the trial process more generally. To avoid the trauma of the court experience, uncounseled juveniles are often overeager to plea as soon as possible. Such early resolution gives counsel no opportunity to explore the facts of the case or obtain discovery. Thus, the later counsel is appointed, the more it is rendered meaningless in the juvenile court setting. Immediate access to counsel is especially necessary for youth in confinement. Research establishes that even short-term incarceration is particularly harmful to adolescents.[6] In short, delays in appointing counsel not only deny youth the opportunity for meaningful communication with their lawyer, but lead to negative outcomes.

The Problem of the Waiver of Counsel

As juvenile court has become more punitive, social science research has confirmed that on their own, uncounseled youth sometimes lack the capacity to understand the nature of the long and short-term consequences of juvenile court involvement and to successfully navigate the increasingly complex dimensions of the modern juvenile court.[7] Adolescent decision-makers are on average less future-oriented and less likely to properly consider the consequences of their actions.[8] As a result of immaturity, anxiety, and direct and indirect pressure from judges, prosecutors, parents, or probation officers, unrepresented youth feel compelled to resolve their cases quickly. Without being fully informed, juveniles too often capitulate to these pressures to waive counsel in order to expedite their cases, entering admissions without obtaining advice from counsel about possible defenses, mitigation, or consequences of juvenile adjudications.[9] Research shows that without appropriate guidance, juveniles are unlikely to understand rights they are asked to waive in colloquies, let alone the consequences of waiving them.[10] Even prior court experience bears no direct relationship to juveniles' ability to

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[4] NATIONAL JUVENILE DEFENDER CENTER, NATIONAL JUVENILE DEFENSE STANDARDS, § 3.1: REPRESENTATION OF THE CLIENT PRIOR TO INITIAL PROCEEDINGS 52-53 (2012) [hereinafter NAT'L JUV. DEF. STDS.].

[5] THE NAT'L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES 90 (2005) [hereinafter NCJFCJ GUIDELINES].

[6] BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INSTITUTE, THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES (2006), http://www.justicepolicy.org/research/1978; Maia Szalavitz, *Why Juvenile Detention Makes Teens Worse*, TIME, Aug. 7, 2009, http://www.time.com/time/health/article/0,8599,1914837,00.html.

[7] *See, e.g.*, *Graham v. Florida*, 130 S. Ct. 2026, 2032 (2010) (noting that youth's limited understanding puts them at a "significant disadvantage in criminal proceedings").

[8] Brief for the American Psychiatric Association as Amici Curiae Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2004) (No. 03-633), 2004 WL 1636447.

[9] NAT'L JUV. DEF. STDS., *supra* note 4, at § 10.4 cmt.: PREVENT INVALID WAIVER OF COUNSEL 157.

[10] Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Court*, 54 FLA. L. REV. 577 (2002) [hereinafter Berkheiser] (citing THOMAS GRISSO, JUVENILES' WAIVER OF RIGHTS: LEGAL AND PSYCHOLOGICAL COMPETENCE 193-194 (1981)) [hereinafter GRISSO]; *see generally* Norman Lefstein et al., *In Search of Juvenile Justice:* Gault *and Its Implementation*, 3 LAW & SOC'Y REV. 491 (1969) (discussing an empirical study demonstrating the difficulty of obtaining juvenile waivers with confidence that they are knowing and voluntary).

understand their legal rights.[11] Experts find that youth are able to make much better decisions when informed and unhurried than when under stress and peer or authority influences—meaning juveniles are less likely to waive their rights, including their right to counsel, if they are able to consult with counsel first.[12]

Late Appointment of Counsel: A Problem in Indiana

Over the last fifteen years, the National Juvenile Defender Center has conducted twenty-one assessments of state juvenile indigent defense systems. Each assessment is a rigorous process involving months of interviewing stakeholders and observing court proceedings, concluding with a written assessment of a particular state's juvenile indigent defense system. One of — if not the most prevalent problem in nearly every state system — is the timing of appointment of counsel.[13] Indiana law currently requires counsel to be appointed at the detention hearing if counsel is not already present and if the child has not waived his right to counsel.[14] According to NJDC's 2006 report, *Indiana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* ("*Indiana Assessment*"), however, "because counsel is appointed at this hearing and not prior to the hearing, the majority of youth do not have representation during this crucial stage. Not only does the decision whether to detain a child have immediate and long-range ramifications for the youth and his or her case, but many Indiana counties estimated that 80-90% of youth admit to the charges at this initial hearing."[15]

Indeed, according to NJDC's *Indiana Assessment*, "[i]n at least one Indiana county, where youth request counsel at the detention hearing, the proceeding is stopped and supposedly continued within 48 hours," but investigators learned that youth were often kept in detention for longer periods of time.[16] Because youth are more focused on short term benefits rather than long-term consequences, they were unwilling to wait for the appointment of council while they languished in detention. A majority of youth, therefore, made life-changing decisions without the assistance of counsel, each one desiring the speedier resolution of their cases.[17] This Rule Amendment will ensure that youth have the assistance of counsel they require. The problems discovered in the *Indiana Assessment* will decrease because counsel will now be appointed prior to—rather than during—the detention hearing.

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[11] GRISSO, *supra* note 10, at 193-194.

[12] Lawrence Steinberg et al., *Are Adolescents More Mature than Adults?: Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop"*, 64 AM. PSYCHOLOGIST 583 (2009).

[13] *See, e.g.*, NATIONAL JUVENILE DEFENDER CENTER & COLORADO JUVENILE DEFENDER COALITION, COLORADO: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN JUVENILE DELINQUENCY PROCEEDINGS 38-39 (2012); CHILDREN & FAMILY JUSTICE CTR., NW. UNIV. SCH. OF LAW, & NATIONAL JUVENILE DEFENDER CENTER, ILLINOIS: AN ASSESSMENT OF ACCESS TO COUNSEL & QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 33-34 (2007) [hereinafter ILLINOIS ASSESSMENT]; NATIONAL JUVENILE DEFENDER CENTER, FLORIDA: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 2-3 (2006); other reports available at http://www.njdc.info/assessments.php.

[14] Ind. Code Ann. § 31-32-4-2.

[15] NATIONAL JUVENILE DEFENDER CENTER, INDIANA: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 8 (2006) [hereinafter INDIANA ASSESSMENT].

[16] *Id.* at 42.

[17] *Id.*

Waiver of Counsel: A Problem in Indiana

Waiver of counsel by young people is a problem both nationally,[18] and in Indiana. According to the *Indiana Assessment*, "significant numbers of youth across Indiana waive their right to counsel in delinquency proceedings without consultation with an attorney and, often, without having an adequate understanding of their right to counsel or the benefits of such representation."[19] Indeed, in the jurisdictions investigators visited, half of the youth routinely waived their right to counsel. In two jurisdictions, 80% waived their right to counsel.[20] Many children waived counsel after speaking with parents—sometimes the very individuals who were the victim of the alleged offenses.[21] The *Indiana Assessment* found that "the unavailability of counsel with whom to consult on this issue deprives Indiana's youth of a vital safeguard in the system."[22]

Indiana juvenile defense attorneys report to NJDC staff that there are children in the Indiana Department of Corrections who have never had an attorney. Clearly, adolescents in the state continue to go through the juvenile delinquency system without an attorney.

Additionally, under current law, a "custodial parent, guardian, custodian, or guardian ad litem" may waive the right to counsel for a child in his or her care, so long as the child has engaged in "meaningful consultation" with said individual.[23] In fact, the child may even waive the right for this "meaningful consultation" as long as his or her waiver is made "knowingly and voluntarily" in the presence of his or her "custodial parent, guardian, custodian, guardian *ad litem*, or attorney."[24] Thus, in practice, without any sort of discussion, a child's parent or guardian may waive their children's right to counsel in delinquency proceedings.

This Amendment will help end these harmful practices.

The Proposed Rule is the Proper Solution

As a solution to the problem of waiver, the National Juvenile Defender Center applauds the stakeholders in Indiana responsible for spearheading efforts to provide both early appointment of counsel and safeguards against waiver of counsel. The proposed Rule Amendment addresses two of the four recommendations for the Indiana State legislature stemming from NJDC's *Indiana Assessment*. NJDC had recommended that the legislature establish limits on the waiver of counsel so that children would be either prohibited from waiving counsel, or at minimum be required to consult with counsel prior to waiver.[25] The *Indiana Assessment* also recommended that counsel be guaranteed to provide representation "at all critical stages of juvenile court proceedings, but no later than prior to a child's first appearance in court."[26] The Amendment appears to satisfy these recommendations.

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[18] NAT'L JUV. DEF. STDS., *supra* note 4, at § 10.4 cmt.: PREVENT INVALID WAIVER OF COUNSEL 157, citing Berkheiser, *supra* note 10, at 577.
[19] INDIANA ASSESSMENT, *supra* note 15, at 10. *See also* Ken Kusmer, *Study: Juveniles Routinely Waive Rights Under Pressure*, INDIANAPOLIS STAR, Apr. 12, 2006, *available at* http://www.njdc.info/pdf/Juveniles%20Waive%20Rights.pdf.
[20] INDIANA ASSESSMENT, *supra* note 15, at 10.
[21] *Id.*
[22] *Id.*
[23] Ind. Code Ann. § 31-32-5-1.
[24] § 31-32-5-2.
[25] *See* INDIANA ASSESSMENT, *supra* note 15, at 47.
[26] *Id.*

Indiana's proposed Amendment is in line with both National Council of Juvenile and Family Court Judges' *Guidelines* and national standards of effective juvenile justice reform and accountability.[27] The NCJFCJ *Guidelines* instruct that in a delinquency court of excellence, counsel must be appointed prior to any initial or detention hearing and must have enough time to prepare.[28] The Rule Amendment is in line with the National Juvenile Defender Center's strong belief that the appointment of counsel should occur as far as possible in advance of the first court appearance in order to allow meaningful consultation between counsel, the child, and the child's family, if necessary.[29] The *National Juvenile Defense Standards* state that the juvenile defender "must consult with the client and provide representation at the earliest stage possible."[30] Finally, "timely appointment helps defenders meet their ethical obligations and secure due process for children."[31] Both NJDC and the NCJFCJ believe that juvenile judges should be extremely reluctant to allow young people to waive their right to counsel.[32] "On the rare occasion when the court accepts a waiver of the right to counsel, the court should take steps to ensure that the youth is fully informed of the consequences of the decision."[33] Namely, "[a] waiver of counsel should only be accepted after the youth has consulted with an attorney about the decision and continues to desire to waive the right."[34]

Indiana's own courts believe this Rule Amendment provides a much-needed reform, solving a problem that Indiana's courts have faced recently on multiple occasions. In *K.F. v. State*, the Court of Appeals was "troubled" by a conflict of interest that occurred between a juvenile and her mother, but could not settle the issue, not presented to the court, related to the requirement of appointment of counsel for the juvenile. The opinion noted that "the Indiana State Bar Association's Civil Rights of Children Committee has recommended that the legislature adopt a proposed rule change that all children alleged to have committed a juvenile offense be provided with consultation with an attorney before waiving his or her right to counsel," and that this proposed rule change was "strongly endorsed" by the State Bar Association's House of Delegates, prior to being sent to the Indiana Supreme Court's rules committee.[35] In *A.A.Q. v. State*, the Court of Appeals described that the proposed rule providing for, "among other things, the appointment of counsel before the detention hearing or initial hearing, whichever occurs first," and a prohibition on waiving "the right to counsel without first engaging in a meaningful consultation with counsel" would "in some instances, expedite matters and save taxpayer dollars."[36] Most crucially, this opinion stated, had the rule already been in place, "some of the right to counsel issues, like those presented today, might very well be avoided."[37] The National Juvenile Defender Center joins these honorable jurists in recommending the Rule Amendment.

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[27] NCJFCJ GUIDELINES, *supra* note 5, at 25; NAT'L JUV. DEF. STDS., *supra* note 4, at § 10.4 cmt.: PREVENT INVALID WAIVER OF COUNSEL 157.
[28] NCJFCJ GUIDELINES, *supra* note 5, at 77, 90.
[29] NAT'L JUV. DEF. STDS., *supra* note 4, at §§ 2.5: PARENTS AND OTHER INTERESTED THIRD PARTIES, 3.1: REPRESENTATION OF THE CLIENT PRIOR TO INITIAL PROCEEDINGS.
[30] NAT'L JUV. DEF. STDS., *supra* note 4, at § 1.4: SCOPE OF REPRESENTATION.
[31] NATIONAL JUVENILE DEFENDER CENTER, ENCOURAGING JUDGES TO SUPPORT ZEALOUS DEFENSE ADVOCACY FROM DETENTION TO POST-DISPOSITION: AN OVERVIEW OF THE JUVENILE DELINQUENCY GUIDELINES OF THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES 4 (2006), *available at* www.njdc.info/pdf/NCJFCJ_Fact_Sheet_Reprint_Fall_2012.pdf.
[32] *See* NAT'L JUV. DEF. STDS., *supra* note 4, at § 10.4 cmt.: PREVENT INVALID WAIVER OF COUNSEL 157; NCJFCJ GUIDELINES, *supra* note 5, at 25.
[33] NCJFCJ GUIDELINES, *supra* note 5, at 25.
[34] *Id.*
[35] *K.F. v. State*, 961 N.E.2d 501, 513 n.11 (Ind. App. 2012) (internal citations omitted).
[36] *A.A.Q. v. State*, 958 N.E.2d 808, 813 n.2 (Ind. App. 2011) (internal citations omitted).
[37] *Id.*

Reforms aimed at guaranteeing early appointment of counsel are often criticized as too expensive to implement. In fact, NCJFCJ reports that "juvenile delinquency courts have found that providing qualified counsel facilitates earlier resolution of summoned cases."[38] Early appointment also conserves judicial resources by preventing delays and minimizing additional hearings.[39]

Additionally, the early appointment of counsel has been shown to improve relationships across all juvenile justice system stakeholders. For example, Illinois detention center staff in one county that authorized early appointment of counsel "reported that the program has resulted in better dialogue between lawyers, children, families and detention staff, thereby leading to more consistency in recommendations for both detention and release, as well as dispositional planning."[40] Thus, the early appointment of counsel is an investment in a strengthened juvenile justice system.

Again, because counsel today is generally not appointed until the detention hearing or the initial hearing, youth rarely have the opportunity to consult with counsel prior to waiver.[41] The proposed Amendment, therefore, is clearly in line with national standards—indeed, it is precisely what such standards call for.

Parental Rights and the Rule

The Rule Amendment necessitates that any waiver of the right to counsel must be made in open court in the presence of the child's attorney. No longer can parents or others with potentially conflicting interests waive the fundamental due process rights of the children in their care. While youth should certainly have the option of consulting with a parent, custodian, or guardian prior to waiver, in most instances a parent, custodian, or guardian will not be an expert in the law. The proposed Amendment still respects the rights and interests of parents. It does not eliminate the rights of juveniles to consult with a parent, guardian, or custodian prior to waiver, but it does require that, if a youth decides to consult with a parent, guardian, or custodian and determines to waive his right to an attorney, the youth must also consult with counsel before making a final decision. Moreover, the early appointment guarantee ensures that attorneys have as much time as possible to keep their clients' parents and guardians informed. Thus, this Amendment presents a simple change with lasting impact.

Simply put, Indiana's young people need legal experts—attorneys—to assist them in making the monumental decision to waive their Constitutional right to counsel.

National Trend

Increasingly, states are recognizing the importance of providing children with early appointment of counsel. In Montana, a 2009 law provided that youth had the right to counsel for the detention hearing.[42] That same year, the New Jersey Supreme Court held that the juvenile right to counsel attached at the time of the filing of a delinquency complaint.[43] In 2010, Louisiana passed a law to provide the appointment of counsel for all youth immediately upon arrest and detention.[44]

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[38] NCJFCJ GUIDELINES, *supra* note 5, at 221-22.
[39] NCJFCJ GUIDELINES, *supra* note 5, at 78, 90-91.
[40] ILLINOIS ASSESSMENT, *supra* note 13 at 40.
[41] INDIANA ASSESSMENT, *supra* note 15, at 32.
[42] Mont. Code Anno., § 41-5-333.
[43] *In re P.M.P.*, 200 N.J. 166 (2009).
[44] La. Ch.C. Art. 809.

There are currently eight states that require juveniles to consult with counsel prior to waiver of their right to an attorney; two additional states that require not only consultation but also a full hearing; thirteen states that prohibit waiver, at least in some circumstances; and one state that provides a near-absolute ban on waiver.[45] In addition to the large number of states that already provide protections for youth prior to waiver of counsel, the national trend is heading towards increased protections, similar to those proposed in the Rule Amendment. Florida recently enacted a rule requiring consultation prior to waiver, Pennsylvania placed a near-complete prohibition on waiver for juveniles, and in the summer of 2012, Ohio increased protections against waiver in its Rules of Juvenile Procedure.[46] In addition, every state that borders Indiana provides the same or similar protections as those in the proposed Amendment.[47]

Conclusion

The National Juvenile Defender Center appreciates the opportunity to provide comment on this critical issue affecting youth of Indiana who are in conflict with the law. NJDC supports the Juvenile Appointment of Counsel Rule Amendment, which provides for early appointment of counsel and would require juveniles to consult with an attorney prior to waiving their right to counsel.

Please do not hesitate to contact us if you require further information or have questions. Thank you.

Respectfully Submitted,

Patricia Puritz
Executive Director

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[45] Consultation with counsel required: Alaska (if accused of felony-grade offense) (ALASKA STAT. § 47.12.090; Florida (FLA. R. JUV. P. 8.165(b)); Maryland (MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-20(b)(2)-(4); MD. R. 11-106(b)); South Carolina (in detention hearings) (S.C. CODE ANN. § 20-7-7215); Texas (TEX. FAM. CODE ANN. § 51.09); Vermont (with consent of GAL also) (VT. R. FAM. PRO. 6(d)(3), (4)); Virginia (consultation required only if accused of felony) (VA. CODE ANN. § 16.1-266(c)(3)); West Virginia (W. VA. CODE § 49-5-9(a)(2)). Hearing required: Kentucky (KY. REV. STAT. ANN. § 610.060(b)); New York (N.Y. FAM. CT. ACT § 249-a). Prohibition, in at least some instances: Arizona (if parents' interests are adverse or conflicting) (ARIZ. R. JUV. P. 10(D)); Arkansas (if parent has filed petition against juvenile or requested removal from home; if institutional commitment is likely; if in EJJ proceedings; if in youth services custody) (ARK. CODE ANN. § 9-27-317(d)-(g)); Illinois (if under 18 and pleading guilty, guilty but mentally ill or waiving the right to trial by jury) (725 ILL. COMP. STAT. ANN. 5/113-5); Iowa (if under 16; if 16 or older and in detention or shelter care hearing, waiver hearing, or dispositional hearing) (IOWA CODE ANN. § 232.11(2)); Kentucky (if felony-grade offense, sex offense, or if there is a possibility of detention or commitment) (KY. REV. STAT. ANN. § 610.060(2)(a)); Minnesota (if subject to competency proceedings; stand-by counsel always appointed in all detention hearings and if any out-of-home placement is proposed) (MINN. R. JUV. DEL. P. 3.02, 3.04)); Montana (if possibility of more than six months detention) (MONT. CODE ANN. § 41-5-1413); New Jersey (if incompetent) (N.J. STAT. § 2A:4A-39(b)(3)); Ohio (if possibility of transfer) (OHIO JUV. P. R. 3); Oklahoma (if petition filed pursuant to § 2-2-104) (OKLA. STAT. tit. 10A, § 2-2-301); Texas (if in transfer hearings, adjudications, dispositions, modifications or if juvenile if mentally ill) (TEX. FAM. CODE ANN. § 51.10(b)); Vermont (if under 13) (VT. R. FAM. PRO. 6(d)(4)); Wisconsin (if under 15; if 15 or older and waiver is granted, court may not transfer to serious juvenile offender program or criminal court or order secure detention) (WIS. STAT. § 938.23(1m)(a)); and Pennsylvania (in almost all circumstances) (PA. R. JUV. CT. P. 152).

[46] FLA. R. JUV. P. 8.165(b); PA. R. JUV. CT. P. 152; OHIO R. JUV. P. 3.

[47] KY. REV. STAT. ANN. § 610.060(b), as interpreted by *D.R. v. Commonwealth*, 64 S.W.3d 292, 296-97 (Ky. Ct. App. 2001); OHIO R. JUV. P. 3; 705 ILL. COMP. STAT. ANN. 405/5-170; MICH. COMP. LAWS § 712A.17c(3).