



The Children's  
Law Center



A Fact Sheet by the ACLU, The  
Children's Law Center & The Office of  
the Ohio State Public Defender

# Ensuring Access to Counsel in Ohio: Why Youth Waive Their Right to Counsel

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In March, 2003, the findings in *Justice Cut Short: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings In Ohio*, suggested that large numbers of poor youth throughout Ohio go unrepresented, even during some of the most critical proceedings that affect their liberty interest. This widespread practice of allowing youth to waive the right to counsel has created a juvenile justice system in which little if any advocacy exists for the rights of youth in many jurisdictions.

The reasons why children in Ohio waive counsel in such alarming numbers are varied. Nearly one-third of attorneys interviewed for *Justice Cut Short* believed that youth are intimidated into waiving counsel. The attorneys also frequently noted that children waive because they think that nothing bad will happen to them if they proceed in their cases unrepresented. Available demographic information suggests that children who stand before the court alone are uniquely vulnerable to misinformation and intimidation during delinquency proceedings. Generally, a high proportion of youths in the juvenile justice system are of below-average intelligence. In Ohio, roughly 75% of Ohio's incarcerated youths need mental health services and nearly half of those incarcerated at ODYS facilities need special educational services.

*Justice Cut Short* site investigators noted several other reasons why kids waive their right to counsel:

## 1 Incomplete or Inadequate Colloquies by the Court Discourage Youth and Parents from Seeking Counsel

Prior to accepting a waiver of counsel from a child, a judge or magistrate normally conducts a record-based discussion of the youth's rights known as a colloquy. In Ohio courts, however, the content of the colloquies are often inadequate or improper and lead to misapprehension and confusion on the part of the child. Because these colloquies do not provide the children with a full understanding of the consequences of their waiver of counsel, courts cannot ensure

that children waive their rights in a knowing and voluntary manner. Some of the problematic practices of judges and magistrates noted in *Justice Cut Short* included the following:

- Failure to ask the youth if he or she wanted an attorney, even though the right to counsel was noted;
- Failure to explain the consequences of admitting the charge;
- Failure to make any determination that the youth understood the rights explained to him or her
- Relying upon the parent to determine if the youth should be appointed counsel;
- Failure to afford a meaningful opportunity for the youth to ask questions about his or her case and rights;
- Failure to inform youth of the right to counsel at any stage of the proceedings even if they waived at an earlier time; and
- Admonishing the youth that "if you did it, you should admit it here today."

**2** Parents Assert and Waive Right to Counsel for their Children

- In spite of the law's clear mandate in Ohio that youth have the right to an attorney as a party in a delinquency action, courts will often permit parents to decide whether the youth will waive this right.
- The interests of the parents are often adverse to those of the youth, particularly in matters such as alleged domestic violence or unruly charges filed by the parents.
- In many instances, parents have their child waive counsel so the child and parent will not have to return to court on another day.
- Many youth do not understand the proceedings, do not understand the elements of the offenses for which they were charged, but plead guilty because a parent thinks they should.

**3** Lack of Defense Counsel Visibility

- In some jurisdictions, neither defense counsel nor prosecutors take an active role in juvenile court proceedings, except in notably serious or contested hearings.
- Probation staff often handles hearings without any lawyers on either side.
- Probation staff advises youth on what to do in court, and explain the proceedings to them after the fact.

**4** Court Culture Devalues the Child Advocate

- In jurisdictions where youth routinely waived their right to counsel, there is a general lack of understanding about the role that defense counsel plays within the system.
- Many attorneys surveyed did not view their role as an advocate for their client's expressed wishes in adversarial delinquency proceedings. Instead, they saw their role as representing the youth's "best interests" as a guardian *ad litem* would do.
- Many youths enter the system believing that they do not need attorneys. However, of those incarcerated youth interviewed, nearly half believed their case would have been handled differently if they had not waived this right.