

Testimony of The Honorable Ernestine Gray
Co-Chair, Juvenile Justice Committee
American Bar Association Criminal Justice Section

Before the House of Representatives for the State of Louisiana
Committee on the Administration of Criminal Justice

on

House Bill No. 1508

May 12, 2004

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you to discuss House Bill 1508, which would prohibit juveniles from waiving their right to counsel in delinquency proceedings. I have been designated by Dennis Archer, President of the American Bar Association, to appear in my capacity as Co-Chair of the American Bar Association's Juvenile Justice Committee and will comment on the proposed legislation in light of standards and policy adopted by the American Bar Association. I am delighted to have the opportunity to discuss these critically important juvenile justice issues with you.

The American Bar Association is the world's largest voluntary professional membership organization, and for over 125 years it has placed a high priority on promoting justice that requires fair treatment and is based on sound reason. The Juvenile Justice Committee works specifically to improve the administration of justice for youth. This commitment spans over three decades, beginning in the early 1970s with the promulgation of the *Institute for Judicial Administration/American Bar Association Juvenile Justice Standards*. These Standards were the result of over a decade of critical thought, discussion, writing and editing by over 300 multidisciplinary experts leading to 23 volumes addressing the administration of juvenile justice.

Throughout the *ABA Standards* and numerous subsequent policies, the ABA, through the work of the Juvenile Justice Center—an outgrowth of the expanding work of the Committee—has consistently worked to ensure that juvenile courts around the country develop procedures that recognize the differences between youths and adults, the developmental differences between individual youths, and the special circumstances involved with special needs youth. It is within this framework that I address H.B. 1508 and the changes it proposes in the area of Waiver of Counsel in juvenile delinquency proceedings.

The *ABA Standards* strongly supports H.B. 1508, which would prevent youths in juvenile delinquency proceedings from waiving their right to counsel. One of the fundamental

principles that guided the development of the *ABA Standards* was that there should be an unwaivable right to counsel for juveniles. Counsel for youth are an essential ingredient in establishing a fair, just and stable juvenile justice system. Thus, the *ABA Standards* require that “[a] juvenile’s right to counsel may not be waived.” *Pretrial* § 6.1.

A juvenile’s right to counsel should not be defeasible for any reason, including willingness to waive the right, parental refusal to employ counsel, or financial ineligibility for appointed counsel. Consulting with counsel and counsel’s subsequent presence in court is crucial because few juveniles have the experience and understanding to decide meaningfully that the assistance of counsel would not be helpful. One study indicates that in waiving *Miranda* rights, 86 of 90 minors waived that right without a thorough understanding of their action. Ferguson and Douglas, “A Study of Juvenile Waiver,” 7 *San Diego L. Rev.* 39, 53-54 (1970).

Mandatory representation not only protects the juvenile, but assists the court in handling cases efficiently. The ‘totality’ test by which most courts, including Louisiana, judge the validity of waivers is difficult to administer, and invites uncertainty at all stages of the proceedings. Also, the presence of defense counsel facilitates obtaining effective waivers of other rights by the juvenile.

Under this proposed legislation a child’s right to counsel cannot be waived by a parent, guardian, or custodian. This also comports with the *ABA Standards*; in creating the *ABA Standards* the notion that a parent, or someone standing in for a parent, could serve to waive rights for a child was considered and specifically rejected.

Youthful clients stand in particular need of careful advice concerning their constitutional rights by someone who is expressly and solely identified with their interests. The child “needs counsel and support if he is not to become the victim first of fear, then of panic.” *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948). Parents alone cannot provide advice because their interests are not always identical with those of the child.

Conflict between parent and child may occur in delinquency proceedings where the parent is, formally or in fact, responsible for initiating the action. An empirical study of juvenile courts in three cities revealed that such conflict was by no means uncommon; the parents acted as complaining witnesses in 17 percent of the observed delinquency cases in one city and in 11 percent of the cases in each of the other two jurisdictions.

Also, the parent may want the child to admit charges that the latter wishes, for whatever reason, to contest. Other parents may believe that, legal issues aside, court intervention is generally desirable in view of the child’s attitude or behavior. There are also parents who desire to be relieved of further responsibility for the child, and court wardship presents an avenue for realizing that goal, at least temporarily. Other sources for parental conflict include the embarrassment or inconvenience of appearing in court causing a parental desire to get the ordeal over with as quickly as possible.

Even where there is no conflict of interest between parent and child, studies indicate that, for several reasons, parents may be of little aid to their children in deciding whether to waive counsel. The parents may themselves not be able to adequately understand the consequences of waiver and may be equally swayed by official pressures to waive. In order to appear “cooperative,” parents may in fact increase the pressure on their children to waive their rights.

House Bill 1508 would address these concerns by eliminating the provisions in the Children’s Code that allowed for the waiver of counsel in juvenile delinquency proceedings. It also would eliminate a provision in the current law requiring the court to give notice to a juvenile in a delinquency proceeding of his right to waive counsel.

I greatly appreciate the opportunity to appear before you today on this issue of utmost importance. I urge you to recognize the effort, consideration and experience underlying the recommendations of the *Institute of Judicial Administration/American Bar Association Juvenile Justice Standards* while considering House Bill 1508. Mandatory representation for juveniles in delinquency proceedings is central to a fair and just juvenile justice system.