



NATIONAL JUVENILE DEFENDER CENTER

**SUMMARY OF THE STATEMENT OF INTEREST IN
N.P. ET AL. V. THE STATE OF GEORGIA, ET AL.
SUPERIOR COURT OF FULTON COUNTY, GEORGIA**

United States Department of Justice, Civil Rights Division

In a class action lawsuit asserting that the public defense system in Georgia’s Cordele Judicial Circuit is so underfunded and poorly staffed that indigent adults and juveniles accused of committing criminal acts are routinely denied their right to legal representation, the Department of Justice (DOJ) filed a Statement of Interest regarding the rights of juvenile defendants in a public defense system.

The Department calls for the following *Due Process rights* of children accused of delinquency:

Right to counsel is a central requirement of due process in delinquency proceedings. The right to counsel is so fundamental to the operation of the criminal and juvenile justice systems that diminishment of that right erodes the principles of liberty and justice that underpin these proceedings. The Court has noted that right to counsel for juveniles “is not a formality...It is of the essence of justice.” *Kent v. United States*, 383 U.S. 451, 561 (1966).

Children who face the loss of liberty must be represented zealously by skilled counsel at every stage of delinquency proceedings. Unique qualities of youth demand special training, experience, and skill for their advocates. Attorneys should be available to advocate for clients at intake and during detention and probable cause hearings, meet with clients, investigate the prosecution’s factual allegations, engage in a robust motions practice, devote time to preparing for trial and the disposition process, and advocate for the needs of post-disposition clients. A lack of skilled counsel may result in a civil claim for constructive denial of counsel.¹

Given the unique status of juveniles, their right to counsel may be denied when they waive that right without first consulting with an attorney. Juvenile waivers must be afforded particular scrutiny in view of the child’s age and immaturity and that waiver of counsel is an area

¹ The Department of Justice has repeatedly articulated the right of adult indigent defendants to bring a civil claim of constructive denial of counsel where traditional markers of representation are systematically absent or compromised and when substantial structural limitations result in limited or absent representation. *See Wilbur v. City of Mount Vernon*, No. CI 1-1 IOORSL (W.D. Wash., Aug. 8, 2013); *Hurrell-Harring v. State of New York*, No. 8866-07 (N.Y. Sup. Ct., Sept. 25, 2014); *Adam Kuren, et al. v. Luzerne County, et al.*, Nos. 57 MAP 2015, 58 MAP 2015 (Pa. Sept. 10, 2015). Under *In re Gault* and pursuant to the 14th Amendment, children are, at the very least, entitled to the same basic protections as adults. 387 U.S. 1 (1967). Accordingly, children in delinquency proceedings may likewise assert constructive denial of counsel where the traditional markers of representation, as outlined in the Department’s Statement of Interests in *Wilbur*, *Hurrell-Harring*, and *Luzerne County*, are absent or structurally limited.

of special concern even in adult courts. Thus, national standards require that children be prohibited from waiving counsel without first consulting with counsel. Should the Court determine that children are regularly waiving counsel without first consulting with an attorney, the Court can and should find that the resulting waivers amount to a system-wide denial of the right to counsel.

If you have questions about this Statement of Interest or questions about how to use it to strengthen work in your community, please contact NJDC at 202.452.0010.