

Testimony of Mary Ann Scali, Deputy Director
National Juvenile Defender

Submitted to the National Academies
Division of Behavioral Sciences and Education
Committee on the Prioritized Plan
to Implement a Developmental Approach in Juvenile Justice Reform

February 13, 2014

Keck Center, Washington, DC

Chairman Bonnie and members of the Committee. My name is Mary Ann Scali, and I am the Deputy Director of the National Juvenile Defender Center (NJDC). Our mission is to promote justice for all children by ensuring excellence in juvenile defense. NJDC provides national leadership on juvenile indigent defense issues by delivering training, technical assistance, and support to juvenile defenders across the country. A key component of our work has focused on conducting in-depth assessments of the access to and the quality of juvenile defense representation across the country.

Question: What role can juvenile defenders, courts, and prosecutors play in reforming their juvenile justice systems to be more developmentally appropriate?

Juvenile defenders have an obligation to work within the justice systems to build toward developmentally appropriate courts. When considering the role of the juvenile defender it is important to look back to the 1967 decision in *In Re Gault*. The Supreme Court recognized over 40 years ago, that youth had the worst of both worlds; they didn't receive the care, protection, or treatment that was supposed to be given to children nor did they receive the procedural protections that were afforded to adults. The court recognized there was a unique and critical role the defender had to play in juvenile court. The Court found that "the juvenile needs the assistance of counsel to cope with problems of the law, to make skilled inquiries into the facts, to

insist on the regularity of the proceedings, and to ascertain whether [a child] has a defense and to prepare and submit it.” The *Gault* court found unequivocally, that youth need and have a constitutional right to counsel in delinquency proceedings and juvenile defenders play a critical role in fulfilling that right. However, that right to counsel means little, if juvenile defenders are not properly trained in the skills necessary to represent youth clients. To be effective advocates, juvenile defenders require specialized skills and knowledge rooted in developmental science as well as mastery of distinctive juvenile hearings, terminology, procedures, and timelines that are unique to juvenile defense practice.

Juvenile defenders are singularly responsible for bringing the perspective of the child before the court. The growing body of developmental research, discussed in the *Reforming Juvenile Justice* report of this committee, informs how juvenile defenders carry out their role in juvenile court. This same body of developmental research, focusing on the unique characteristics of youth, laid the foundation for the United States Supreme Court’s differential jurisprudence for youth leading to four major decisions being handed down since 2005. Each of these decisions has honed in on developmental aspects of youth as the basis for eliminating the juvenile death penalty, severely curtailing the use of juvenile life without parole, and requiring that law enforcement consider age for purposes of administering *Miranda* warnings. These decisions provide strong support for establishing developmentally appropriate courts where developmentally normative behavior is not charged as criminal conduct.

Many legal decisions are impacted by the individual developmental status of youth clients. For example, when considering the culpability of youth, juvenile defenders should bring forth the Supreme Court’s determination that youth are “categorically less culpable” due to their developmental status. When youth are charged with specific intent offenses that require a

“reasonable person” intentionally, knowingly, or recklessly engaging in certain conduct; developmentally appropriate juvenile defense mandates arguing for a “reasonable juvenile” standard. In analyzing the validity of juvenile confessions, research confirms that youth are more compliant with authority and are more susceptible to coercion, and juvenile defenders are empowered to question the validity of these confessions. Juvenile defenders not only have to know the law around these issues, they must be versed in and able to argue how developmental constructs impact the legal analysis. Mastery of both the law and developmental research are essential to be able to move forward in a way that all courts recognize the unique nature of youth.

Juvenile defense advocacy goes beyond the courtroom. Juvenile defenders are at work on issues like decreasing youth waiver of counsel, eliminating indiscriminate shackling of youth, decreasing youth incarceration, removing youth from adult jails, raising the age of juvenile jurisdiction, and establishing a presumption of indigence for youth for purposes of appointment of counsel. These reforms are all related to the reforms this committee is discussing and are elements of implementing a developmental approach in juvenile courts, both in practice and in policy.

Question: How can training and technical assist be strengthened from OJJDP?

From the vantage point of NJDC, there are both internal and external mechanisms needed to strengthen the Office of Juvenile Justice and Delinquency Prevention’s (OJJDP) ability to provide training and technical assistance. An OJJDP Administrator who supports a developmentally appropriate juvenile court system is good for everyone. Internally, broad-based support across the Department of Justice (DOJ) for developmentally appropriate juvenile courts

would significantly enhance OJJDP's ability to reform outdated courts. Agencies within DOJ should meet with OJJDP to convene and focus on justice issues that are impacted by adolescent development and to have conversations about what developmentally appropriate courts look like. Specifically, all of DOJ should support a strong juvenile defense bar and promote zealous juvenile defense as a primary element of developmentally appropriate court reforms. OJJDP, with the support of DOJ, should convene conversations across other federal agencies like Department of Health and Human Services and the Department of Education to examine cross cutting youth issues that impact youth court involvement and set policies restricting passages toward delinquency courts.

Externally, the reauthorization of Juvenile Justice and Delinquency Prevention Act (JJJPA) would promote and signal sound support for developmentally driven reforms. From the juvenile defense perspective, the addition of a new core mandate to the JJJPA, focused on upholding due process could address critical deficits in many of our juvenile courts. This core mandate would be grounded in the findings that many courts continue to encourage waiver of counsel and deprive youth of basic procedural rights. Court recognition of normative adolescent development coupled with due process would limit youth court involvement and improve the overall functioning of juvenile courts. Reauthorization of the JJJPA built on a foundation of developmental principles, adding a core mandate for due process, would accelerate the pace of developmentally sound reforms.

Through the JJJPA, OJJDP can support state reforms to make juvenile courts more developmentally appropriate and encourage states to adopt developmentally sound policies across all aspects of the court process. OJJDP could take a stronger stance with juvenile court stakeholders by issuing statements about the critical importance of justice decisions being

grounded in adolescent developmental principles. OJJDP should allocate resources for juvenile specific training purposes, like the Juvenile Training Immersion Program (JTIP). JTIP is a 40 lesson curriculum grounded in developmental principles and, if fully implemented, would change the face of juvenile defense from laissez-faire to preemptive. OJJDP also should promote state based resource centers for juvenile defenders to ensure access to training and support as well as oversight and monitoring. A strengthened OJJDP would have the ability to create consensus across the justice field for supporting and encouraging developmentally sound court decisions. A strengthened OJJDP could promote policies against transferring youth to adult court, against a valid court order exception for the prosecution of status offenders, against indiscriminate shackling of youth, and for a strengthened juvenile defense bar with the tools to push back against court systems using delinquency as a means to render services that should have been afforded through other systems.

OJJDP can support juvenile defenders in their efforts to make juvenile justice systems more developmentally appropriate by taking certain actions internally/administratively at OJJDP, but also by issuing programmatic statements externally to promote a developmentally appropriate framework and by funding innovations and research related to adolescent development. For example:

Administrative and Internal Operations Support

- Support the reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJJPA) in clear and unequivocal terms with the addition of a new core mandate focused on respect for due process and a recognition of adolescent development in all juvenile justice programming.

- Convene an intra-office juvenile indigent defense working group that reports to the Administrator on issues related to adolescent development;
- Convene an inter-agency (across the Office of Justice Programs (OJP) and potentially other key federal agencies as well) juvenile indigent defense working group to facilitate cross-agency collaboration on matters related to juvenile defense and adolescent development;
- Work with the Bureau of Justice Assistance (BJA) to invite the juvenile defense perspective into their solicitations and to dedicate a specific portion of funding to support innovations in juvenile defense and adolescent development;

Programmatic, Solicitation, and Research Support

- Issue programmatic and policy statements promoting a framework that embraces the adolescent development perspective.
- Fund Innovation
 - Incentivize the creation of state-based Juvenile Defender Resource Counsel, akin to the specialized Domestic Violence Resource Prosecutors supported by DOJ, that can provide guidance on issues related to adolescent development;
 - Support development of an open source juvenile defense data collection system;
 - Pilot programs with state bar administrators to amend state bar exams to include juvenile delinquency/legal jurisprudence including adolescent development (*Graham, Roper, Miller, JDB*) as a testable subject;
 - Support initiatives that adopt the best practice-based National Juvenile Defense Standards and facilitate Juvenile Training Immersion Program (JTIP) training on adolescent development;

- Develop Research Agenda
 - Work with researchers at the National Institute of Justice (NIJ) and elsewhere to formulate an agenda for impactful research, including research related to adolescent development.

Will using a developmental approach be difficult for courts, prosecutors, or defenders to adopt?

Nothing can be done until OJJDP is reinvigorated and the JJDPA is reauthorized. DOJ should lead a charge across the justice program agencies to ensure that OJJDP has the funding and authority needed to engage in developmentally principled reform and monitoring. If the mission and vision of OJJDP is supported up through the lines of justice, the efforts of the agency will have more of an opportunity to succeed. With appropriate support, OJJDP could make individualized advocacy a priority—individualized decision making across all stakeholders is essential to a developmental approach.

OJJDP can support the adoption of a developmental approach by:

- Encouraging states to adopt legislation for specialized juvenile training requirements to ensure that all children are represented by informed counsel who are trained in issues related to adolescent development.
- Educating other juvenile justice stakeholders—judges, prosecutors, probation officers, police—about adolescent development issues.
- Allocating resources for training programs such as JTIP, including the JTIP Certification Training Program, and innovative state and local trainings focused on adolescent development.

- Promoting state-based resource centers as places to centralize and facilitate trainings across the individual states.

Juvenile defenders have begun to innovate and implement developmentally appropriate practices and policies in juvenile courts. The juvenile defense community stands ready to promote a developmental perspective and looks forward to working with OJJDP, OJP, DOJ, and any other federal agency interested in curtailing court punishment of normative youth behavior.