

**SUMMARY OF THE STATEMENT OF INTEREST IN
S.R. & L.G. v. KENTON COUNTY, ET AL.
U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY**

United States Department of Justice, Civil Rights Division

In a case involving two elementary school children who allege that a school resource officer (SRO) violated their rights under the Fourth and 14th Amendment and Title II of the Americans with Disabilities Act (ADA) when they were handcuffed in school after exhibiting conduct arising out of their disabilities, the Department of Justice (DOJ) filed a Statement of Interest regarding the rights of children, particularly children with disabilities, in their interactions with SROs.

The Department calls for *appropriate limits* on the role and responsibilities of SROs:

SROs should not criminalize behavior that school officials could properly handle. An SRO's role should be focused on addressing and preventing serious, real, and immediate threats to the physical safety of the school and its community. SROs should not enforce the school code of conduct or engage in routine discipline of students. Further, SROs should only use law enforcement actions as a last resort and only for serious criminal conduct or when necessary to protect students and staff from a threat of immediate harm.

SROs should have clearly defined roles and specialized training. SROs and law enforcement agencies need to ensure that their responsibilities in the school setting are clearly delineated. Where it is necessary for an SRO to intervene, the officer should deploy a range of non-punitive alternatives and always select the least coercive measure. SROs should receive specialized training to work with children, especially children with disabilities, to better understand adolescent development and disability-related behavior.

The Department calls for the following *Fourth Amendment rights* of children handcuffed at school:

The Court must consider whether an objectively reasonable officer would have seized S.R. and L.G. by handcuffing them for their misbehavior. *See Graham v. Connor*, 490 U.S. 386, 398 (1989). An SRO's subjective belief that he had probable cause to arrest the children is irrelevant. Even assuming that the officer had probable cause, that alone would not make the decision to handcuff the children reasonable. The ultimate inquiry is whether the scope and character of the seizure was objectively reasonable under the totality of the circumstances. *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985).

Plaintiffs have alleged sufficient facts to state a claim that the SRO's handcuffing of S.R. and L.G. was unreasonable. In considering the reasonableness of the SRO's conduct, the Court must consider the particularized facts and circumstances, including:

- the age of the children,
- the fact that the incidents occurred at a school,
- the severity of the alleged crime(s),
- whether the children posed a safety threat,
- whether the children were actively resisting arrest,
- the children's disabilities,
- the risks of intrusion by handcuffing compared to the countervailing government interests,
- the punitive purpose of the SRO's action, and
- the appropriate role of an SRO in a school.

The Department calls for the following *Title II ADA rights* of school children:

The ADA applies to interactions between SROs and children with disabilities. An SRO, similar to all law enforcement officers, must carry out law enforcement responsibilities in a manner that complies with the anti-discrimination mandate of the ADA. *See Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 209 (1998); *Johnson v. City of Saline*, 151 F.3d 564, 569 (6th Cir. 1998); U.S. Dep't of Justice, *Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement*, § I.2 (Apr. 4, 2006).

The ADA requires SROs to reasonably modify their practices when needed to interact with students with disabilities to avoid disability-based discrimination. 28 C.F.R. § 35.130(b)(7). The ADA's reasonable modification requirement applies to interactions between SROs and children with disabilities. The existence of probable cause to arrest an individual is independent of the obligation to make reasonable modifications to law enforcement policies, practices, or procedures where necessary to avoid disability discrimination. Examples of reasonable modifications that might be necessary include:

- Adopting a non-confrontational stance by removing the officer's hat, sitting down, and assuring the individual that he or she is heard, in light of the understanding that the officer's uniform may frighten an individual with mental illness.
- Asking an individual with mental illness questions regarding his or her basic needs, such as "what would make you feel calmer/safer, etc.?"

The ADA prohibits policies and practices that have a discriminatory effect on children with disabilities. U.S. Dep't of Justice, 28 C.F.R. Pt. 35, App. B at 688 (2015). This prohibits public entities from applying nonessential policies and practices that are neutral on their face but have the effect of discriminating based on disability.

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.



NATIONAL JUVENILE DEFENDER CENTER

**SUMMARY OF THE DEPARTMENT OF JUSTICE INVESTIGATION OF THE
ST. LOUIS COUNTY FAMILY COURT, MISSOURI**

United States Department of Justice, Civil Rights Division

The Department found the following specific *Due Process violations*:

DENIAL OF CONSTITUTIONALLY-ADEQUATE ACCESS TO COUNSEL. St. Louis County Family Court fails to provide adequate representation for children in delinquency proceedings, in violation of the Due Process Clause of the Fourteenth Amendment. *In re Gault*, 387 U.S. 1, 34-43 (1967). Several factors contribute to this denial of constitutionally-adequate representation by counsel, including:

- the staggering caseload of the sole public defender assigned to handle all indigent juvenile delinquency cases in St. Louis County,
- an arbitrary system of determining eligibility for public defender representation and appointing private attorneys for children who do not qualify for a public defender,
- the flawed structure of the St. Louis County Family Court, and
- significant gaps in representation between detention hearings and subsequent court appearances.

VIOLATION OF PRIVILEGE AGAINST SELF-INCRIMINATION. St. Louis County Family Court fails to adequately protect children's privilege against self-incrimination.

- The Family Court's requirement that a child admit to the allegations to be eligible for an informal processing of his case is coercive, and potentially forces a child to be a witness against himself in subsequent proceedings. *Gault*, 387 U.S. at 55 (“[T]he constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults.”).

INADEQUATE PROBABLE CAUSE. St. Louis County Family Court fails to provide adequate probable cause determinations to children facing delinquency charges. *Schall v. Martin*, 467 U.S. 256 (1984); *Gerstein v. Pugh*, 420 U.S. 103, 114 (1974); *R.W.T. v. Dalton*, 712 F.2d. 1225, 1227 (8th Cir. 1983).

- Probable cause determinations are made on an *in camera*, *ex parte* basis, and children have no opportunity at any stage of the proceedings to challenge probable cause.

IMPROPER CERTIFICATION (TRANSFER). St. Louis County Family Court fails to provide children facing certification to be criminally tried in adult criminal court with adequate due process.

- In particular, the Family Court's failure to consider, and permit adversarial testing of, the prosecutorial merit of the underlying allegations against the child at the certification

hearing does not “measure up to the essentials of due process and fair treatment,” in violation of the Fourteenth Amendment. *See Kent v. United States*, 383 U.S. 541, 562, 567 (1966).

DEFICIENT GUILTY PLEAS. St. Louis County Family Court fails to ensure that guilty pleas are entered knowingly and voluntarily, in violation of children’s rights under the Fifth, Sixth, and Fourteenth Amendments. *See Boykin v. Alabama*, 395 U.S. 238 (1969).

- Judges and commissioners do not adequately examine whether children understand the rights they give up when pleading guilty or the potential collateral consequences.

UNCONSTITUTIONAL COURT STRUCTURE. The organizational structure of the Family Court is contrary to separation of powers principles and deprives children of adequate due process. U.S. Const., art. I, art. II, § 2, cl. 5; art. III, § 2.

- Wherein both prosecutor and probation officer are employees of the court,
- the prosecutor is counsel for the probation officer, and
- the probation officer acts as both an arm of the prosecution as well as a child advocate.

The Department found the following specific *Equal Protection violations*:

DISPARATE FORMAL PROSECUTION. Black children are almost one-and-a-half times (1.46) more likely than White children to have their cases handled formally, even after introducing control variables such as gender, age, risk factors, and allegation.

- This ratio means that Black children have a lower opportunity for diversion.

HEIGHTENED LEVELS OF PRETRIAL DETENTION. Race has a significant and substantial impact on pretrial detention.

- Even after controlling for the severity of the offense, the risks presented by the youth, and the age of the youth, Black youth have two-and-a-half times (2.50) the odds of being detained (held in custody) pretrial than do White children.

MORE FREQUENT REMOVAL FROM COMMUNITY FOR VIOLATION OF COURT CONDITIONS. When Black children are under the supervision of the Court and violate the conditions equivalent to probation or parole, the Court commits Black children almost three times (2.86) more to the Missouri Division of Youth Services (DYS) than White children who are under similar Court supervision.

- This disparity exists even when we control for past referrals and treatment. Children committed to DYS custody are placed in restrictive out-of-home settings.

DISPROPORTIONATE PLACEMENT AFTER ADJUDICATION. After controlling for severity of the offense and other variables, the odds of the Court placing Black youth in DYS custody after adjudication (the juvenile equivalent of an adult conviction) are more than two-and-a-half times (2.74) the odds of White youth placement.

- White youth are significantly more likely to be placed in a less restrictive setting—such as on probation with in-home services or in a residential treatment facility that is not operated by the state—than in DYS custody.

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



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 took the following stances with regard to the *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.

**SUMMARY OF THE AGREEMENT TO ADDRESS UNCONSTITUTIONAL
YOUTH ARREST AND PROBATION PRACTICES IN MERIDIAN, MISSISSIPPI**

United States Department of Justice, Civil Rights Division

In 2012, the Department of Justice (DOJ) filed a lawsuit against the City of Meridian, the state of Mississippi, Lauderdale County Youth Court, and the Youth Court Judges, alleging systematic violations of youths' due process rights, in the matter of United States v. City of Meridian, et al. As of September, 2015, the State of Mississippi and the City of Meridian had agreed to resolve the litigation against them and that agreement was awaiting court approval. This fact sheet summarizes the proposed agreement. DOJ's allegations that Lauderdale County and the Lauderdale County Youth Court Judges failed to provide basic due process protections for children had not been resolved, and remain in litigation as of September, 2015.

The Agreement provides for *Due Process reforms*, including requirements that the Mississippi Division of Youth Services:

Provide youth with notice using youth-appropriate language at the initial meeting regarding the youth services process, the potential consequences for violating the probation contract, and an explanation of the probation review and revocation process.

Inquire into an individual youth's ability to understand the probation process and ensure that this process is explained in youth-appropriate language.

Set a fixed meeting schedule at a youth's initial meeting for all subsequent probation meetings, notify the youth's counsel of the meeting schedule, and make best efforts to reschedule a probation meeting should the youth request the presence of counsel who is unavailable.

Adopt or revise policies and practices to ensure that youth's probation status is adequately reviewed by Youth Services Counselors.

Ensure that conditions of probation are written in simple terms that are easily understandable to youth and prevent arbitrary and discriminatory enforcement. Probation contracts must include a clear explanation of a youth's rights and how the youth can satisfy the mandatory school attendance requirement while on probation.

The Agreement provides for *search and seizure reforms*, including requirements that the Meridian Police Department:

Conduct school-based arrests of juveniles only if officers have probable cause to believe that a juvenile has committed a felony, a criminal offense that involves a real and immediate threat, a misdemeanor or other indictable offense occurs in the officer's presence, or a judicial warrant or custody order specifically directs the arrest of a student in a school.

Avoid executing a judicial warrant at a school. A felony warrant may be executed at a school when it is not practical to conduct the arrest at alternative locations.

Document in sufficient detail the basis for any school-based arrest, including any factors that justify arresting the youth at school and factors that support a determination of probable cause.

While the Agreement does not resolve the Department's claim that Lauderdale County and Lauderdale County Youth Court Judges deprive children of basic due process, the Department found the following specific *due process violations* and intends to continue pursuing these claims in litigation:

Failure to provide a fair and reliable determination of probable cause before or promptly after arrest. *Gerstein v. Pugh*, 420 U.S. 103, 124-5 (1974). Detention hearings do not include probable cause determinations and do not meet the federal 48 hour standard, as Lauderdale County holds all juvenile hearings only on Tuesdays and Thursdays, resulting in significant extensions of "temporary" incarceration.

Failure to meaningfully meet *Gault's* proscription. *In re Gault*, 387 U.S. 1 (1967). Children report that they are not always appointed an attorney for detention or adjudication hearings, and that the public defender who is appointed pursuant to a contract with the Youth Court does not provide meaningful or effective representation.

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

**SUMMARY OF THE AGREEMENT TO REFORM THE JUVENILE COURT OF
MEMPHIS AND SHELBY COUNTY, TENNESSEE**

United States Department of Justice, Civil Rights Division

In April, 2012, the Department of Justice (DOJ) issued an Investigation Report regarding its findings that the Juvenile and Family Court of Shelby County, Tennessee, has violated the due process and equal protection rights of youth. In December, 2012, the DOJ and the Court entered into a Memorandum of Agreement to address the allegations. Below is a summary of that agreement.

The Agreement provides for *Due Process reforms*, including requirements that the court:

Establish a dedicated juvenile defender unit in the public defender's office that will be independent of the court and have the structure and resources to provide independent, ethical, and zealous representation for children.

Require procedural safeguards against self-incrimination, to provide notice of charges, and to hold transfer hearings.

Appoint counsel before children appear before a magistrate judge for a probable cause determination and provide the probable cause determination within 48 hours for all warrantless arrests.

Make written findings for key judicial decisions, including transfer hearings.

Implement policies in the court's detention facility that will prohibit use of restraints, ensure a suicide prevention plan, and require staff to receive training on adolescent development.

The Agreement provides for *Equal Protection reforms*, including requirements that the court:

Assess where and why disproportionate minority contact (DMC) in the juvenile justice system occurs, including analysis of referrals and the court's decisions at key stages of a child's court case.

Prohibit pre-adjudication detention for reasons that are not related to public safety or future appearance in court.

Hire a DMC coordinator, who will be charged with gathering data, working with the court and other county agencies to develop alternatives to detention, and ensuring that children are not referred to juvenile court based on their race.

Establish a pilot program allowing law enforcement to phone in information about a recently arrested youth and get guidance on whether the child should be immediately released and provided with an appearance summons or transported to juvenile court.

The Agreement provides for comprehensive *community engagement and accountability reforms*, including requirements that the court:

Create a community oversight group comprised of juvenile justice stakeholders and six to nine citizens selected by the mayor and approved by the county commission.

Provide bi-annual community updates and publish progress reports on its website, including a data dashboard of its progress with the agreement.

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