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Youth's Right to Counsel in the Missouri Juvenile Justice System: Is Their Constitutional Right Being Upheld?

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YOUTH'S RIGHT TO COUNSEL IN THE MISSOURI JUVENILE JUSTICE SYSTEM: IS THEIR CONSTITUTIONAL RIGHT BEING UPHELD?

*The choices for juvenile justice systems are either great outcomes and no due process or great due process and no good outcomes. The trick is to mix the best of both worlds and marry procedure with compassion.*¹

I. INTRODUCTION

The United States Constitution, the supreme law of the land, sets forth that in every criminal prosecution, the accused shall enjoy the right to the assistance of counsel for his defense.² It commands no state “shall deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.”³

Before the development of juvenile courts, the law made no distinction between adult and juvenile⁴ offenders, but rather subjected children to the same punishments as adult criminals.⁵ In the nineteenth century, a reform effort, which was rooted in sixteenth century European educational reform, led to the establishment of the juvenile court in the United States.⁶ This reform movement changed society’s perception of children, from one of smaller adults to one of “persons with less than fully developed moral and cognitive abilities.”⁷ Yet, it was only a century ago that a separate justice system for juveniles was first established⁸ as a remedy for the state to intervene in the

1. MARY ANN SCALI ET AL., NATIONAL JUVENILE DEFENDER CENTER, MISSOURI: JUSTICE RATIONED AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF JUVENILE DEFENSE REPRESENTATION IN DELINQUENCY PROCEEDINGS 36 (Spring 2013), *available at* http://www.njdc.info/pdf/Missouri_Assessment.pdf [hereinafter NJDC ASSESSMENT] (quoting a juvenile court judge).

2. U.S. CONST. amend. VI.

3. U.S. CONST. amend. XIV, § 1.

4. The use of the term “juvenile” in this article refers to children under the age of seventeen. *See* MO. REV. STAT. § 211.021.1 (2013).

5. RICHARD LAWRENCE & CRAIG HEMMENS, JUVENILE JUSTICE: A TEXT/READER 21 (2008) (recognizing that some punishments were very severe; “youth who committed serious offenses could be subjected to prison sentences, whipping, and even the death penalty”).

6. HOWARD N. SNEIDER & MELISSA SICKMUND, JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 86 (1999).

7. *Id.*

8. LAWRENCE & HEMMENS, *supra* note 5.

lives of children in a manner different from the way it intervened in the lives of adults.⁹ Since its inception, the focus of the juvenile justice system was on the juvenile offender, rather than the particular offense, and was based on the principle that youth are developmentally different from adults and more amenable to intervention.¹⁰ Under this philosophy, juvenile offenders were designated as “delinquent” rather than “criminal,” and the courts sought to turn juvenile delinquents into productive citizens by focusing on treatment rather than punishment.¹¹ The juvenile was supposed to feel that he or she was the object of the state’s care, not that he or she was under arrest or on trial.¹² Thus, the procedural formalities and due process protections afforded to adult defendants were deemed unnecessary in juvenile court.¹³ However, in 1967, the United States Supreme Court’s *In re Gault* decision revolutionized the procedural inhibitions in the juvenile court system by extending the principles of due process to delinquency proceedings; it held that accused youth facing the prospect of incarceration have the right to counsel.¹⁴ Today, the need for the assistance of counsel in juvenile court is even more essential, as more youth face the possibility of adult prosecution, dispositions have become longer and more punitive, and delinquency adjudications now carry consequences that follow the youth into adulthood or, in some cases, for the rest of their lives.¹⁵

However, ever since the beginning of the juvenile court development, juveniles have been denied their constitutional rights of due process and the equal protections of the law.¹⁶ An individual’s constitutional right to assistance of counsel, guaranteed by the Constitution, is not exclusively for adults.¹⁷ In almost every jurisdiction, there are many rights that are granted to adults but withheld from juveniles.¹⁸ For example, juveniles are not entitled to bail, indictment by grand jury in a federal proceeding, a public trial, or trial by jury.¹⁹ Juveniles’ due process rights are violated when their legal interests are

9. SNEIDER & SICKMUND, *supra* note 6.

10. *Id.*

11. LAWRENCE & HEMMENS, *supra* note 5, at 24 (citing ROBERT M. MENNEL, THORNS AND THISTLES: JUVENILE DELINQUENTS IN THE UNITED STATES, 1825–1940 (1973)) (explaining how children were considered less mature and less aware of their consequences as adults, so they were not to be held legally accountable for their behavior in the same manner as adults).

12. *In re Gault*, 387 U.S. 1, 15 (1967).

13. SNEIDER & SICKMUND, *supra* note 6, at 87.

14. *Gault*, 387 U.S. at 36–37.

15. Marsha Levick & Neha Desai, *Still Waiting: The Elusive Quest to Ensure Juveniles a Constitutional Right to Counsel at All Stages of the Juvenile Court Process*, 60 RUTGERS L. REV. 175, 175–76 (2007).

16. *See Gault*, 387 U.S. at 14–17.

17. *Id.* at 35.

18. *Id.* at 14.

19. *Id.* (citing *Kent v. United States*, 383 U.S. 541, 555, 555 n.22 (1966)).

not protected.²⁰ Accordingly, juvenile defenders have an important and vital role in the discourse on public policy and juvenile justice reform.²¹ Children, most of all, need access to competent counsel when they come before the court, for when a child's liberty and freedom are at risk, meaningful access to legal advice and counsel is essential.²² The juvenile defender must understand his or her role and be able to keep up with the growing body of scientific research and legal jurisprudence that applies directly to the representation of children.²³ Without assistance from juvenile defenders, thousands of youth's constitutional right to counsel, made possible by *Gault*, are significantly compromised.²⁴ Juvenile defense attorneys are a critical buffer against injustice and are the heart of ensuring the juvenile court system operates fairly, accurately, and humanely.²⁵

"An effective juvenile justice system must encompass the foundational elements of fundamental fairness and due process" and must include legal advocacy and "zealous representation by competent and well-trained attorneys who uphold the rights of children at all critical stages."²⁶ In accordance with *Gault*, Missouri passed a juvenile code in 1995, which statutorily guaranteed children the right to counsel in juvenile court.²⁷ Two years later, in 1997, the Missouri State Public Defender (MSPD) office recognized the importance of a juvenile's right to counsel and created a Youth Advocacy Unit that provided specialized training to defenders and services to the juvenile clients.²⁸ The unit was able to provide more attention and services directly to juveniles, since the defenders were able to gain firsthand knowledge of the particular needs and challenges facing juveniles.²⁹ However, in 2007 the Youth Advocacy Unit dissipated into the MSPD's general trial division,³⁰ taking away the specialized resources for juvenile representation. Unfortunately, ensuring due process for juveniles in delinquency proceedings today is an extremely low priority in Missouri's juvenile justice system.³¹

20. NJDC ASSESSMENT, *supra* note 1, at 7.

21. Wallace Mlyniec, *Forward* to LISA THURAU ET AL., NATIONAL JUVENILE DEFENSE CENTER, NATIONAL JUVENILE DEFENSE STANDARDS 6 (2012), available at <http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf> [hereinafter NATIONAL JUVENILE DEFENSE STANDARDS].

22. *Id.* at 5.

23. *Id.*

24. *Id.* at 8.

25. *Id.*

26. NJDC ASSESSMENT, *supra* note 1, at 7.

27. MO. REV. STAT. § 211.211 (1989).

28. NJDC ASSESSMENT, *supra* note 1, at 54.

29. *Id.*

30. *Id.* at 25, 54.

31. *Id.* at 7.

This article argues that the current state of the juvenile justice system in Missouri is not providing adequate counsel to juveniles and will continue to be an issue if resources are not given to the juvenile division. Part II will explain the historical roots of the American juvenile court system and will indicate the importance of adequate representation for juveniles. Part III will examine the juvenile court system specifically as it pertains to Missouri. Part IV will provide an anecdotal account of the benefits of the Youth Advocacy Unit while it was in existence. Part V will discuss the current state of Missouri's juvenile court system.

II. A BRIEF HISTORY OF THE AMERICAN JUVENILE JUSTICE SYSTEM

A brief look at juvenile court history demonstrates that unbridled discretion, however benevolently motivated, is often a poor substitute for principle and procedure.³² Prior to the development of juvenile courts, the American justice system did not recognize a categorical difference between adults and juveniles and treated youthful offenders the same as any other adult in the criminal system.³³ In fact, when juveniles were convicted of a criminal offense, they were subject to the same capital and corporal punishments as adult offenders,³⁴ and even served prison sentences alongside adult criminals.³⁵ However, it was not long before an effort was made to reform the prison system.³⁶ In the early 1800s, instead of being viewed as smaller versions of adults, children began to be viewed as persons at a unique stage of human development.³⁷ Attempts were made to decriminalize juvenile offenders and the removal of youth from the adult criminal justice system began.³⁸ Rather than being categorized as "criminals," juvenile offenders were designated as "delinquent," and the courts focused on treatment of the juvenile delinquent rather than punishment.³⁹ Initially, troubled youth were taken into custody and

32. *In re Gault*, 387 U.S. 1, 18 (1967); Hon. Theodore McMillian & Dorothy Lear McMurtry, *The Role of the Defense Lawyer in the Juvenile Court—Advocate or Social Worker?*, 14 ST. LOUIS U. L.J. 561 (discussing the claim that juveniles obtain benefits from the special procedures applicable to them, which more than offset the disadvantages of denial of due process).

33. ANN H. CROWE, U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JURISDICTIONAL TECHNICAL ASSISTANCE PACKAGE FOR JUVENILE CORRECTIONS 26 (2000).

34. Sanford J. Fox, *A Contribution to the History of the American Juvenile Court*, 49 JUV. & FAM. CT. J. 7, 7 (1998).

35. CROWE, *supra* note 33.

36. *See* Fox, *supra* note 34.

37. CROWE, *supra* note 33.

38. *Id.*

39. LAWRENCE & HEMMENS, *supra* note 5, at 24 (citing Robert M. Mennel, *Origins of the Juvenile Court: Changing Perspectives on the Legal Rights of Juvenile Delinquents*, 18 CRIME & DELINQ. 68, 68–78 (1972)).

sentenced to newly created “Houses of Refuge,”⁴⁰ which were institutions that would instruct delinquent youth in proper discipline and moral behavior.⁴¹ At the time, parents were expected to supervise and control their children; but if it became apparent that parents were not properly disciplining their children, the state would take over that responsibility.⁴² The state acted as *parens patriae* rather than prosecuting attorney and judge.⁴³ The court believed that the state could provide better education and training for the child, which would be in the best interests of the child and the entire community.⁴⁴ However, by the mid-1800s, questions arose as to whether most youth benefitted from this practice.⁴⁵ Although these institutions were intended for education and treatment, sexual abuse, physical attacks by peers, and discrimination were well too common.⁴⁶ The Houses of Refuge were met with evidence that the state was not an effective or benevolent parent, but rather failed to practice what the doctrine of *parens patriae* had promised.⁴⁷

In 1899, an entirely separate court system for juveniles was developed,⁴⁸ and the United States’ first juvenile court was established in Chicago, Illinois.⁴⁹ During this period, society began recognizing that there was a distinctive behavioral stage between childhood and adulthood.⁵⁰ It was recognized that the time between childhood and adulthood provided an essential stage of social, emotional, and intellectual maturity.⁵¹ The Chicago

40. LAWRENCE & HEMMENS, *supra* note 5, at 21, 43; Fox, *supra* note 34, at 7 (describing “Houses of Refuge” as institutions with a program that “relied on the reforming influence of religion but was relatively benign and more appropriate to the immaturity of the inmates”).

41. LAWRENCE & HEMMENS, *supra* note 5, at 21 (citing ROBERT M. MENNEL, THORNS AND THISTLES: JUVENILE DELINQUENTS IN THE UNITED STATES, 1825-1940, at 5-8, 15-16 (1973)).

42. LAWRENCE & HEMMENS, *supra* note 5, at 22, 24 (citing *Commonwealth v. Fisher*, 213 Pa. 48 (Pa. 1905)).

43. *Kent v. United States*, 383 U.S. 541, 554-55 (1966); *See also In re Gault*, 387 U.S. 1, at 16-17 (explaining that *parens patriae* is a Latin phrase used to describe the power of the state to act in place of a parent for the purpose of protecting the property interests and the person of the child).

44. LAWRENCE & HEMMENS, *supra* note 5, at 22 (citing *Ex parte Crouse*, 4 Whart. 9 (Pa. 1839)).

45. *Id.* at 22-23 (discussing how critics of the Houses of Refuge argued against state intervention for minor and noncriminal behavior and claimed that these reformatories were not providing the kind of care, education, or training that was promised under the *parens patriae* doctrine).

46. *Id.* at 22.

47. *Id.* at 23 (noting that the discipline in the Houses of Refuge was more brutal than parental, as the institutional environment had a corrupting influence on the juveniles, as evidenced by assaults, homosexual relations, and frequent escapes).

48. *Id.* at 24.

49. SNEIDER & SICKMUND, *supra* note 6, at 85.

50. *See CROWE*, *supra* note 33.

51. *Id.*

juvenile court established a core tradition in juvenile justice that was designed to remove the harshness of criminal procedure from juvenile delinquency proceedings.⁵² The *parens patriae* doctrine became the legal basis for court jurisdiction, staying true to the philosophy that children who violated the law were not to be treated as criminals.⁵³ Juvenile court proceedings became more civil rather than criminal, as the purpose of the juvenile court was for the protection and treatment of the child rather than for punishment.⁵⁴ The focus of the early juvenile court was to prevent potentially criminal children from actually becoming criminal, regardless of whether they were brought in front of the court for a criminal or status offense.⁵⁵ Status offenders are children who come within the juvenile court jurisdiction for non-criminal behavior considered unacceptable solely because of their age.⁵⁶ Such behavior includes truancy, behavior beyond parental control, behavior injurious to welfare, or when the child is a runaway and absent from the home.⁵⁷ Since the juvenile court's main purpose was to protect the child, juvenile court hearings were less formal than adult criminal proceedings, thus deeming the protections of due process, including the right to an attorney, completely unnecessary.⁵⁸ Consequently, dispositions⁵⁹ were designed to serve the "best interests of the child" and treatment lasted until the child was "cured" or became an adult, whichever came first.⁶⁰ With this came a concern about the growing number of juveniles who were institutionalized indefinitely, solely for the sake of treatment.⁶¹

By 1945, all fifty states had a juvenile court.⁶² All the states seemed to generally agree on the goals and objectives of the juvenile justice system, and how it should be similar to, and distinct from, the adult criminal justice system.⁶³ Around this time another paramount viewpoint began to emerge—the view that a juvenile court judge must be willing to search out the causes of

52. Fox, *supra* note 34, at 9.

53. LAWRENCE & HEMMENS, *supra* note 5, at 24.

54. *Id.*

55. Marvin Ventrell, *Evolution of the Dependency Component of the Juvenile Court*, 49 JUV. & FAM. CT. J. 17, 17 (Fall 1998).

56. Jan C. Costello & Nancy L. Worthington, *Incarcerating Status Offenders: Attempts to Circumvent the Juvenile Justice and Delinquency Prevention Act*, 16 HARV. C.R.-C.L. L. REV. 41, 42 (1981).

57. MO. REV. STAT. § 211.031(1)(2) (2012).

58. SNEIDER & SICKMUND, *supra* note 6, at 87.

59. Levick & Desai, *supra* note 15, at 180 (defining disposition as the equivalent of sentencing phase in adult criminal justice system).

60. SNEIDER & SICKMUND, *supra* note 6, at 87.

61. *Id.*

62. LAWRENCE & HEMMENS, *supra* note 5, at 25.

63. *Id.* (noting that the juvenile system did differ between some states and jurisdictions).

delinquency and formulate a plan for curing it.⁶⁴ The complexity for determining delinquency was not “has this child committed a specific wrong?” but rather “what is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career?”⁶⁵ The juvenile court was engaged in determining the needs of the child and of society by examining the background, social history, and family environment of the child in order to develop a treatment plan rather than to adjudicate criminal conduct.⁶⁶ For approximately fifty years after its development, the method for processing juvenile cases in the juvenile court system went largely unchallenged.⁶⁷

However, toward the end of World War II, the juvenile justice system came under scrutiny for its insistence on an individualized administration of justice in all aspects of the court process and its critical dependence on vast amounts of discretion.⁶⁸ In the 1950s, there became a growing concern for the number of juveniles institutionalized indefinitely for the sake of treatment and claims for fairness for juvenile offenders began to appear.⁶⁹ Yet, it was not until the 1960s that the United States Supreme Court required that juvenile courts mandate more formal proceedings and begin to make juvenile courts more like adult criminal courts.⁷⁰

In 1966, *Kent v. United States* extended basic due process rights to juveniles being transferred to adult court and was the first Supreme Court case to modify the longstanding belief that juveniles did not require the same due process protections as adults.⁷¹ In *Kent*, the juvenile defendant’s counsel filed motions for a waiver hearing⁷² and for access to the juvenile’s social services file.⁷³ The judge did not rule on the motion for a waiver hearing and waived

64. Fox, *supra* note 34, at 11.

65. *Id.* (describing how Judge Mack was the first to endorse a new innovative approach that emphasized how the judge was of paramount importance, and the ordinary legal evidence in a criminal court is not the same evidence that was to be heard in a juvenile proceeding).

66. *Kent v. United States*, 383 U.S. 541, 554 (1966); LAWRENCE & HEMMENS, *supra* note 5, at 25.

67. LAWRENCE & HEMMENS, *supra* note 5, at 25.

68. Fox, *supra* note 34, at 13.

69. SNEIDER & SICKMUND, *supra* note 6, at 87.

70. *Id.* For example, rather than the more lenient standard of a “preponderance of evidence,” the state must prove its case “beyond a reasonable doubt” during the adjudicatory stage of the juvenile court process. *In re Winship*, 397 U.S. 358, 368 (1970).

71. LAWRENCE & HEMMENS, *supra* note 5, at 26.

72. A juvenile waiver hearing is “an individualized determination of whether jurisdiction over a given child should be ceded to adult criminal court;” it often involves the state offering evidence of the juvenile’s maturity or amenability to treatment in the juvenile system. Sarah Freitas, *Extending the Privilege Against Self-Incrimination to the Juvenile Waiver Hearing*, 62 U. CHI. L. REV. 301, 301 (1995).

73. *Kent v. United States*, 383 U.S. 541, 545–46 (1966).

jurisdiction without holding a hearing or reciting any reason for the waiver.⁷⁴ The Supreme Court noted that some juvenile courts “lack the personnel, facilities and techniques to perform adequately as representatives of the State in a *parens patriae* capacity.”⁷⁵ Thus, “the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”⁷⁶ The Court expressed that waiver of jurisdiction is a critically important action determining important statutory rights of the juvenile.⁷⁷ Therefore, the waiver without a hearing was invalid, and the juvenile’s attorney was entitled to access to the social records. The Court held that basic due process rights applied, for the first time, to juvenile proceedings only involving waiver decisions.⁷⁸

In 1967, the Supreme Court decided its landmark decision *In re Gault*,⁷⁹ only one year after the *Kent* decision recognized that juveniles should be afforded due process rights when being transferred to adult court. *Gault* extended fundamental elements of due process to all juveniles, holding that juveniles have the right to counsel in all juvenile delinquency proceedings, even when remaining in the juvenile system.⁸⁰ In this revolutionary case, Gault, while on probation, and a friend made an obscene telephone call to a neighbor.⁸¹ On the day of his hearing, an officer stated that Gault confessed to making the obscene remarks after he was questioned by officers out of the presence of his parents, without counsel, and without being advised of his right to remain silent.⁸² As a juvenile, the Court committed Gault to a correctional facility for an indefinite term of up to six years.⁸³ However, had Gault been an adult, he would have been entitled to substantial rights under the Constitution and would have been subject, at most, to a minimal fine or two months imprisonment for his offense.⁸⁴ Had Gault been an adult, the United States Constitution would guarantee him rights and protections in regard to arrest, search and seizure, and pretrial interrogation.⁸⁵ It would assure him notice of the charges and time to decide his course of action and prepare his defense.⁸⁶

74. *Id.*

75. *Id.* at 555–56.

76. *Id.* at 556.

77. *Id.*

78. *Id.* at 557, 562.

79. *In re Gault*, 387 U.S. 1, 1 (1967).

80. *Gault*, 387 U.S. at 36; NJDC ASSESSMENT, *supra* note 1, at 15.

81. *Gault*, 387 U.S. at 4.

82. *Id.* at 5–7.

83. *Id.* at 29.

84. *Id.*

85. *Id.*

86. *Id.*

His right to assistance of counsel would also have been made clear.⁸⁷ If the Court acted on the basis of his confession, careful procedures would have been required to assure that it was made voluntarily.⁸⁸ Thus, the *Gault* decision stressed that being a juvenile “does not justify a kangaroo court.”⁸⁹ The court particularly noted how essential it was for any child facing the prospect of incarceration to receive “the guiding hand of counsel at every step in the proceeding against him.”⁹⁰

After *Gault* was decided, standards and guidelines began to develop in order to restructure the entire juvenile justice system, based on what the country had learned from its 150 years of experience with a separate justice system for juveniles.⁹¹ Juveniles and their due process rights began to gain national attention when Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDPA) in 1974.⁹² The act reflected growing concerns that the juvenile justice systems had adopted policies and practices contrary to their rehabilitative goals.⁹³ The JJDPA created statutory mechanisms in order to protect the rights and welfare of juveniles.⁹⁴ It also required states that accept JJDPA funds to demonstrate progress toward removing status offenders from secure facilities and developing non-secure programs to meet the needs of these children.⁹⁵ In addition, the JJDPA required the National Advisory Committee on Juvenile Justice and Delinquency Prevention to develop National Juvenile Justice Standards and Guidelines.⁹⁶ The National Juvenile Justice Standards respond to the growing demands placed on the juvenile defender, incorporate research regarding adolescent development and social science into practice, and strengthen juvenile defense policy and practice.⁹⁷ Formulating a set of practice standards that clearly define the role of juvenile defenders is essential to improving the practice of juvenile law.⁹⁸

87. *Gault*, 387 U.S. at 29.

88. *Id.*

89. *Id.* at 28.

90. *Id.* at 36 (quoting *Powell v. Alabama*, 287 U.S. 45, 69 (1932)).

91. Fox, *supra* note 34, at 14.

92. See 42 U.S.C. §§ 5601–5681 (2012).

93. Costello & Worthington, *supra* note 56, at 50–51.

94. NJDC ASSESSMENT, *supra* note 1, at 16; See 42 U.S.C. §§ 5601–5681.

95. Costello & Worthington, *supra* note 56, at 42.

96. NJDC ASSESSMENT, *supra* note 1, at 16.

97. NATIONAL JUVENILE DEFENSE STANDARDS, *supra* note 21, at 8.

98. *Id.*

III. MISSOURI'S JUVENILE JUSTICE SYSTEM

In 1903, Missouri's first juvenile court was established in St. Louis, adopting nearly identical legislation as the first juvenile court in Chicago.⁹⁹ In 1995, the Missouri General Assembly enacted major revisions to the Missouri Juvenile Code,¹⁰⁰ generating more punitive laws on juveniles in an effort to "get tough" on juvenile crime.¹⁰¹ Even though the state's "child welfare policy" remained "the best interest of the child," the new juvenile code removed language expressing that the juvenile was to preferably receive care, guidance, and control in his own home.¹⁰² The revision indicated that juvenile placements with social service facilities may be given for a determinate period of time, meaning that a child could now be "sentenced" to a rehabilitative institution regardless of the child's treatment progress or the child's ability to function at home.¹⁰³ Most notably, the new code lowered the minimum age of certification from fourteen to twelve years old for a child who has committed an offense that would be considered a felony if committed by an adult.¹⁰⁴ Yet, for the specific offenses of first-degree murder, second-degree murder, first-degree assault, forcible rape, forcible sodomy, first-degree robbery, and distribution of drugs, or if the child has two prior adjudications or offenses which would be felonies if committed by an adult, the minimum age for certification was removed altogether, stating a certification hearing was now mandatory at any age.¹⁰⁵

Today, a Missouri judicial circuit, the juvenile, or the family court has exclusive jurisdiction in juvenile cases involving delinquency where a person is alleged to have committed a status offense, or is alleged to have violated state law or municipal ordinance, prior to becoming seventeen.¹⁰⁶ The juvenile

99. Josh Gupta-Kagan, *Where the Judiciary Prosecutes in Front of Itself: Missouri's Unconstitutional Juvenile Court Structure*, 78 Mo. L. Rev. 1245, 1270 (2013).

100. Caterina DiTraglia, "The Worst of Both Worlds": *Defending Children in Juvenile Court*, 63 Mo. L. Rev. 477, 478 (1998).

101. *Id.* at 477.

102. *Id.* at 478–79. Compare MO. REV. STAT. § 211.011 (1994), with MO. REV. STAT. § 211.011 (Supp. 1997).

103. DiTraglia, *supra* note 100, at 480 (citing MO. REV. STAT. § 211.181(4) (Supp. 1997)); Costello & Worthington, *supra* note 56, at 52 (this was in contrast to the JJDPa assumption that children should remain with their families or in their communities whenever possible).

104. MO. REV. STAT. § 211.071(1) (Supp. 1997); DiTraglia, *supra* note 100, at 479.

105. MO. REV. STAT. § 211.071(1) (Supp. 1997); DiTraglia, *supra* note 100, at 479.

106. MO. REV. STAT. § 211.031.1(3) (Supp. 2013). Status offenders are children who come within the juvenile court jurisdiction for non-criminal behavior. Although they have not committed crimes (acts for which adults could be arrested and confined), they are taken into custody, held in secured facilities, and are often times detained longer than children charged with crimes. Thus, when status offenders are incarcerated, it is for behavior that is considered unacceptable solely because of their age. Costello & Worthington, *supra* note 56, at 42; SUPREME COURT OF MO. OFFICE OF STATE COURTS ADM'R (OSCA), MISSOURI JUVENILE & FAMILY

courts may retain jurisdiction over a child until he or she reaches the age of twenty-one.¹⁰⁷ Missouri incorporates the constitutional requirement of the right to counsel for juveniles accused of crimes, stating that Missouri children are “entitled to be represented by counsel in all proceedings.”¹⁰⁸ This juvenile defense representation operates in three basic stages: (1) the certification stage, where the court must decide whether the child should stand trial as an adult; (2) the adjudicatory stage, where the child’s guilt or innocence is at issue; and (3) the dispositional stage, where the court must decide where to place a child who is convicted of a crime.¹⁰⁹

The additional stages of juvenile court generally address intake, detention, transfer to the adult system, adjudication, disposition, post-disposition parole or probation, and final release from the juvenile court’s jurisdiction.¹¹⁰ The “intake” decision looks at whether the juvenile should be formally referred to juvenile court or diverted from the juvenile system.¹¹¹ A lawyer is needed to advocate in the child’s defense if there is not sufficient evidence to determine if probable cause exists, and to prevent the child from being labeled a juvenile delinquent or from even being caught up in the court processes.¹¹² If the juvenile is formally referred to juvenile court, a “detention” hearing is held to determine whether the child should be released or detained awaiting the adjudicatory hearing; it is the juvenile’s first appearance in court and the

DIVISION ANNUAL REPORT CALENDAR 2012, at 6 (2012), *available at* <http://www.courts.mo.gov/file.jsp?id=62834> (explaining that status offenses include behavior injurious to oneself or others, habitually absent from home, truancy, and beyond parental control as well as that the juvenile court also has jurisdiction over child abuse and neglect cases, where the child is the victim or custody related matters are an issue).

107. MO. REV. STAT. § 211.041 (Supp. 2013); NJDC ASSESSMENT, *supra* note 1, at 26 (explaining that the juvenile court has concurrent jurisdiction with (1) the municipal court over any child alleged to have violated a municipal curfew ordinance; (2) the circuit court for any child who is alleged to have violated a state or municipal ordinance involving use of any tobacco product; and (3) the adult court for a youth younger than seventeen years old who has been transferred to adult court and whose prosecution results in conviction or plea of guilty, if the court chooses to invoke dual jurisdiction and impose a juvenile disposition that would postpone the execution of an adult criminal sentence).

108. MO. REV. STAT. § 211.211 (2013).

109. DiTraglia, *supra* note 100, at 483.

110. Levick & Desai, *supra* note 15, at 178.

111. *Id.* at 179 (citing Gary S. Katzman, *Introduction: Issues and Institutions*, in *SECURING OUR CHILDREN’S FUTURE: NEW APPROACHES TO JUVENILE JUSTICE AND YOUTH VIOLENCE* 1, 10–11 (Gary S. Katzman ed., 2002) (stating that diversion may include diversion entirely from juvenile court, diversion to another system such as the dependency or mental health system, or diversion to a specialty court such as a drug court)).

112. McMillian & McMurtry, *supra* note 32, at 576–77.

child's first opportunity to meet with counsel.¹¹³ During the detention hearing, the attorney must ensure that the child's detention is in accordance with the juvenile code, which calls into play all of the legal faculties of the lawyer for the child.¹¹⁴ "Transfer" or "certification" refers to the prosecution of juveniles as adults in the criminal justice system or based on the seriousness of the crime with which they are charged.¹¹⁵ The attorney must ensure that the findings of the transfer hearing have met all the criteria needed to certify the child as an adult.¹¹⁶ The "adjudicatory" phase is the trial phase, and it is the child's rights during this hearing that *In re Gault* primarily addressed.¹¹⁷

If the child is found guilty after the hearing or admits guilt to the charges, the court will proceed to "disposition," which is the equivalent of the sentencing phase in the adult criminal justice system.¹¹⁸ The length of the dispositional order has no fixed completion date and will generally turn on the court's determination that the juvenile has successfully completed the requirements of the program or other specific provisions of the disposition order.¹¹⁹ During disposition, the attorney may argue for a particular disposition, present testimony in support of the recommendation, and suggest an alternative disposition not known to the court.¹²⁰ The "post-disposition" phase is the period of a juvenile's release from an institution or facility when he or she remains on "aftercare probation," which is the equivalent of parole for adults; but the juvenile is still subject to the jurisdiction of the juvenile court.¹²¹ Counsel is also needed to advise the child of his right to appeal any final judgment.¹²² At any one of the hearings, proceedings, or stages previously described, juveniles undeniably need assistance of counsel.¹²³

113. Levick & Desai, *supra* note 15, at 179 (citing Gary S. Katzman, *Introduction: Issues and Institutions*, in *SECURING OUR CHILDREN'S FUTURE: NEW APPROACHES TO JUVENILE JUSTICE AND YOUTH VIOLENCE* 1, 10–11 (Gary S. Katzman ed., 2002)).

114. McMillian & McMurtry, *supra* note 32, at 578.

115. Levick & Desai, *supra* note 15, at 179–80 (explaining that typically the prosecutor requests the judge to transfer youth into the adult system when the juvenile is above a certain age and has been charged with a particularly serious felony, and must also demonstrate that the juvenile is not amenable to treatment in available juvenile facilities).

116. McMillian & McMurtry, *supra* note 32, at 591; *See* MO. REV. STAT. 211.071(6) (Supp. 2013) (stating that the criteria for certification includes but is not limited to the age of the child, whether the act alleged would be a felony if committed by an adult, and whether or not the child can benefit from the treatment or rehabilitative programs available to the juvenile court).

117. Levick & Desai, *supra* note 15, at 180.

118. *Id.*

119. *Id.* at 181.

120. McMillian & McMurtry, *supra* note 32, at 593–94.

121. Levick & Desai, *supra* note 15, at 182.

122. McMillian & McMurtry, *supra* note 32, at 598–99.

123. Interview with Caterina DiTraglia, Assistant Fed. Pub. Defender, E. Dist. of Mo., in St. Louis, Mo. (Jan. 31, 2014).

However, Missouri law structures juvenile courts in a unique manner. At a minimum, each of Missouri's forty-five judicial circuits has a judge who oversees the juvenile office in charge of all juvenile court cases.¹²⁴ Each juvenile office has a lead juvenile officer who supervises key system players, such as legal officers and deputy juvenile officers (DJOs).¹²⁵ The DJO's role in Missouri was first created in 1903 and was strengthened in 1957 when legislation gave DJOs authority to exercise prosecutorial discretion, in an attempt to reduce the stigma of being charged with a delinquent act and committed to a detention facility.¹²⁶ When a juvenile is taken into custody he or she immediately must be taken directly before the judicial court or delivered to the DJO.¹²⁷ The DJO makes a preliminary inquiry of the facts to determine whether there is probable cause to believe that a juvenile has committed a delinquent offense.¹²⁸

The DJO occupies an unusual position in Missouri's juvenile justice system.¹²⁹ Missouri law establishes that DJOs are judicial branch officials hired by, supervised by, and subject to termination by juvenile court judges.¹³⁰ DJOs have the authority to make arrests and are responsible for protecting the interests of the juvenile.¹³¹ Since the DJO chooses whether to file juvenile court cases, what charges to file against a juvenile, and what recommendations to make to the judge throughout the case, they serve both as a party prosecuting petitions and as an advocate furthering the juvenile's position.¹³² This role of the DJO, acting both as an arm of the prosecution and as advocate for juveniles' due process rights, is unique to Missouri DJOs.¹³³ This is problematic because the DJO is not seen as adversarial to the juvenile—there is a “relationship of trust and confidence between the child and DJO [acting] as the first indispensable step to rehabilitation.”¹³⁴ In contrast, a prosecuting attorney seeks to prosecute individuals for crimes.¹³⁵ These two roles are

124. NJDC ASSESSMENT, *supra* note 1, at 22.

125. *Id.* (equating legal officers with prosecuting attorneys and DJOs with probation officers).

126. Gupta-Kagan, *supra* note 99, at 1271.

127. MO. REV. STAT. § 211.031 (Supp. 2013); *In re M. C.*, 504 S.W.2d 641, 646 (Mo. Ct. App. 1974).

128. JUVENILE DIV., CITY OF ST. LOUIS FAMILY COURT, CITY OF ST. LOUIS FAMILY COURT REPORT TO THE COMMUNITY 2012, at 8 (2012), available at <http://www.stlcitycircuitcourt.com/juvenile/2013%20Juv%20docs/Report%20to%20the%20Community%202012.pdf> (explaining that DJOs conduct interviews of juveniles, parents, victims, witnesses, and law enforcement).

129. *In re M.C.*, 504 S.W.2d at 646.

130. MO. REV. STAT. § 211.351; Gupta-Kagan, *supra* note 99, at 1245, 1249.

131. NJDC ASSESSMENT, *supra* note 1, at 23.

132. Gupta-Kagan, *supra* note 99, at 1250.

133. NJDC ASSESSMENT, *supra* note 1, at 23.

134. Gupta-Kagan, *supra* note 99, at 1273 (quoting *In re F.C.*, 484 S.W.2d 21, 25 (Mo. Ct. App. 1972)).

135. Gupta-Kagan, *supra* note 99, at 1273.

incompatible because a DJO cannot create a *parens patriae* relationship with a juvenile if he is also a prosecutor.¹³⁶ As a result, in Missouri's juvenile court, the judiciary essentially prosecutes in front of itself.¹³⁷

It should be noted that not all juvenile cases fall within the jurisdiction of the juvenile courts.¹³⁸ A child between the ages of twelve and seventeen who has committed an offense that would be considered a felony if committed by an adult can be transferred or "certified" to adult court.¹³⁹ In the case of certain serious felonies, there is no age limit for certification, and the court must hold a hearing before deciding to dismiss the juvenile petition and transfer the case to adult court.¹⁴⁰ The juvenile court has discretion over whether a juvenile petition should be dismissed and transferred to adult court.¹⁴¹ If the juvenile court relinquishes jurisdiction and allows the juvenile to be prosecuted in adult court, juvenile court jurisdiction is terminated forever, unless the child is found not guilty.¹⁴² Missouri law allows for an invocation of dual jurisdiction when sentencing a certified juvenile, which allows the court to impose a juvenile disposition as a condition of the suspended adult criminal sentence.¹⁴³ Sending children into adult courts, rather than the juvenile justice system, needlessly destroys lives and further endangers the public by turning nonviolent youth into hardened criminals.¹⁴⁴ Federally financed studies have shown that minors prosecuted as adults commit more violent crimes later in life and are more likely to become career criminals than those sent through juvenile courts, where they receive counseling and family support.¹⁴⁵

IV. AN ANECDOTAL ACCOUNT OF THE MISSOURI YOUTH ADVOCACY UNITS

Missouri's juvenile code strives to facilitate the care, protection, and discipline of children who come within the jurisdiction of the juvenile court in Missouri.¹⁴⁶ Missouri's juvenile code is intended to be construed liberally, so that each juvenile shall receive such care, guidance, and control as will contribute toward the child's welfare.¹⁴⁷ The child welfare policy in the state of

136. *Id.*

137. *Id.* at 1249.

138. NJDC ASSESSMENT, *supra* note 1, at 26.

139. *Id.*

140. MO. REV. STAT. § 211.071.1 (Supp. 2013); NJDC ASSESSMENT, *supra* note 1, at 26.

141. NJDC ASSESSMENT, *supra* note 1, at 31.

142. *Id.* at 32.

143. *Id.*

144. Op-Ed., *When Children Become Criminals*, N.Y. TIMES, Jan. 19, 2014, http://www.nytimes.com/2014/01/20/opinion/when-children-become-criminals.html?hp&rref=opinion&_r=1.

145. *Id.*

146. MO. REV. STAT. § 211.011 (2000).

147. *Id.*

Missouri is governed by the best interest of the child.¹⁴⁸ When the child is removed from the control of his or her parents, the court is responsible for providing care that is as “nearly as possible equivalent” to that which should have been given to the child by his or her parents.¹⁴⁹ The Youth Advocacy Unit was once Missouri’s most proficient resource for protecting the best interests of the child and securing the kind of care the child’s parents should have given the child.

In response to the 1995 Missouri juvenile legislation putting more emphasis on punishment rather than rehabilitation,¹⁵⁰ the MSPD established a juvenile defender division, called the Youth Advocacy Unit, in 1997, to serve St. Louis City and St. Louis County.¹⁵¹ The unit was designed to be a model for juvenile representation throughout the state and to help train other public defender offices with smaller juvenile caseloads.¹⁵² At its outset, the Youth Advocacy Unit was relatively large, consisting of three advocates in the county and four advocates in the city, plus a district defender, two dispositional specialists, and two investigators.¹⁵³ The initial vision was to progress the Youth Advocacy Unit by having units in St. Louis, Kansas City, and a third somewhere in the middle of the state in an attempt to handle all juvenile cases in the state of Missouri.¹⁵⁴

The driving force behind the implementation of the Youth Advocacy Unit was Cathy DiTraglia, who drafted the first proposal for a dedicated juvenile office in 1996 and presented suggestions to the Missouri Public Defender Commission on what could be done to improve the representation for children.¹⁵⁵ She presented on how to give juveniles effective counsel and how juvenile representation needed to be improved in order to reduce recidivism.¹⁵⁶ During this time, one issue with the juvenile court was the large number of juvenile caseloads, averaging around 100 to 200 cases per attorney.¹⁵⁷ Although juvenile cases are not as complicated as adult trial cases, the volume

148. *Id.*

149. *Id.*

150. *Youth Advocacy*, MO. STATE PUB. DEFENDER, http://www.publicdefender.mo.gov/legal/youth_advocacy.htm (last visited Feb. 4, 2014).

151. NJDC ASSESSMENT, *supra* note 1, at 25 (also stating that another Youth Advocacy Unit was established in Kansas City, Missouri in 2000).

152. NJDC ASSESSMENT, *supra* note 1, at 25.

153. Interview with Jacqueline Kutnik-Bauder, Assoc. Professor, St. Louis Univ. Sch. of Law, in St. Louis, Mo. (Jan. 23, 2014).

154. Interview with Caterina DiTraglia, *supra* note 123 (noting that a Youth Advocacy was set up in Kansas City, Missouri in 2000, but a unit was never formed in the middle of the state); Interview with Patricia Harrison, Assistant Professor, St. Louis Univ. Sch. Of Law, in St. Louis, Mo. (Jan. 31, 2014).

155. Interview with Caterina DiTraglia, *supra* note 123.

156. *Id.*

157. Interview with Patricia Harrison, *supra* note 154.

and nature¹⁵⁸ of the practice was impossible to manage.¹⁵⁹ Attorneys tended to triage their cases by putting most of their time and energy in deciding a course of action for the more serious cases and often preparing less for the others.¹⁶⁰ Consequently, many juveniles were not receiving good representation.¹⁶¹ However, part of the Youth Advocacy Unit's philosophy was that each attorney should have between twenty-five to thirty juvenile cases at a time, with the expectation that attorneys were going to great lengths to advocate the cases in more detail, due to their lower caseload.¹⁶²

The main goal of the Youth Advocacy Unit was to professionalize the juvenile justice system, developing an area of expertise in juvenile representation that changed the way juveniles were represented.¹⁶³ Before the unit was in existence, inexperienced attorneys would begin their career in the juvenile justice system and leave, within six months to a year, for a position in the adult justice system.¹⁶⁴ New attorneys lacked the experience and skills necessary to represent juveniles. However, the Youth Advocacy Unit sought to keep the attorneys in juvenile court long enough for them to develop an experienced-based expertise.¹⁶⁵ Most attorneys in the Youth Advocacy Unit stayed three to five years on average, which allowed the defenders to supply more traditional representation to their juvenile clients.¹⁶⁶ Due to their longevity in the juvenile justice system, more attorneys began deposing witnesses, making discovery requests, and appealing more cases.¹⁶⁷

Furthermore, the attorneys in the Youth Advocacy Unit received specialized training on how to handle juvenile cases. Based on their research and knowing what the law was at the time, the original attorneys in the unit had a good idea of what needed to be done and what needed to be changed¹⁶⁸ as far as providing adequate representation for juveniles. The problem was successfully litigating these issues.¹⁶⁹ In order to aid with this, representatives from a similar project in Massachusetts conducted a series of informal meetings with the initial attorneys in the Youth Advocacy Unit, where they

158. *Id.* (recognizing the therapeutic nature of the juvenile court versus the aggressiveness of adult court).

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. Interview with Jacqueline Kutnik-Bauder, *supra* note 153 (Kutnik-Bauder helped draft the proposal for a dedicated juvenile office and was part of the original group of attorneys who first staffed the Youth Advocacy Unit).

164. *Id.*; Interview with Patricia Harrison, *supra* note 154.

165. Interview with Jacqueline Kutnik-Bauder, *supra* note 153.

166. *Id.*

167. *Id.*

168. Interview with Caterina DiTraglia, *supra* note 123.

169. *Id.*

discussed how to approach and litigate certain situations that occurred in juvenile representation.¹⁷⁰ Additionally, the unit provided specialized training on juvenile confessions and on how to analyze whether a juvenile fully understood his or her rights.¹⁷¹ The specialist discussed juvenile brain development, which showed that because of a juvenile's lack of maturity and lack of experience, juveniles feel compelled to talk with authorities.¹⁷² Attorneys in the Youth Advocacy Unit were even sent to conferences, including a national conference in Washington, D.C., specifically focusing on representation in juvenile court.¹⁷³ As the unit progressed, the MSPD office became very supportive in offering specialized juvenile training to the attorneys in the unit.¹⁷⁴ For the most part, services and training were always available and the attorneys in the Youth Advocacy Unit were encouraged to take advantage of those opportunities.¹⁷⁵

When a juvenile case was brought to the Youth Advocacy Unit, a defender would begin handling the case at the detention and keep the case through disposition and adjudication.¹⁷⁶ The defenders in the unit would receive the juvenile's affidavit and meet with the child within twenty-four hours of his or her detention.¹⁷⁷ Having a defender present during this stage allowed them to review the police reports and call the juvenile's family, if need be, in preparation for the detention hearings.¹⁷⁸ At the time, the Youth Advocacy Unit had an agreement with the court in which an advocate from the unit would always be present at the detention hearing, regardless of whether the juvenile qualified for a public defender or not.¹⁷⁹ If the juvenile qualified for a

170. *Id.* (explaining how there was a similar project developed in Roxbury, Massachusetts, called the Youth Advocacy Project, which provided services, including psychiatrists and counselors, in addition to legal counsel).

171. Interview with Patricia Harrison, *supra* note 154.

172. *Id.*; See *supra* Part II and accompanying footnotes.

173. Interview with Dan Underwood, Managing Attorney, Children's Legal Alliance, Legal Servs. of E. Mo., in St. Louis, Mo. (Jan. 24, 2014).

174. *Id.*

175. *Id.*

176. *Id.*; Interview with Jacqueline Kutnik-Bauder, *supra* note 153.

177. MO. REV. STAT. § 211.061(4) (2000); Interview with Jacqueline Kutnik-Bauder, *supra* note 153; Interview with Patricia Harrison, *supra* note 154.

178. Interview with Patricia Harrison, *supra* note 154.

179. Interview with Caterina DiTraglia, *supra* note 123; Interview with Jacqueline Kutnik-Bauder, *supra* note 153 (noting that the detention hearings were usually early in the morning and on short notice, so the defender would step in; however, a private attorney could always show up at any time if the family hired one). Kutnik-Bauder also noted that sometimes the court would appoint a defender to a case even if the child was never detained. Interview with Jacqueline Kutnik-Bauder, *supra* note 153.

public defender, an attorney from the unit would open a case for them.¹⁸⁰ Ellen Ribaud, who was an attorney in the Youth Advocacy Unit in its early stages, remembers the unit having a liberal outlook on the guidelines for indigency,¹⁸¹ much like the intention for the liberal construction of the juvenile code. Very often the unit would take juveniles who did not meet the requirements because it did not know if the child's parents would be willing or have the means to hire a private attorney, depending on the juvenile's or the family's circumstances.¹⁸²

Furthermore, Jacqueline Kutnik-Bauder, who was part of the Youth Advocacy Unit's original group of attorneys and tried over fifty cases in her three years with the unit, mentioned a higher rate of innocent clients when working with juveniles.¹⁸³ Acquittals and dismissals are also more prevalent in juvenile court because there is less evidence and less support for the juvenile cases.¹⁸⁴ Due to the lack of evidence, DiTraglia stressed the importance of having an attorney at the beginning stages of a juvenile case to see whether a child is not guilty, or guilty of less than what they are officially charged.¹⁸⁵ The Youth Advocacy Unit had the ability to start a case in its early stages because the unit had the means to delegate an investigator to work with the police and a social worker to work with the child.¹⁸⁶ With these resources, an experienced advocate in the unit was able to show the court at a low level if a child was innocent and potentially save the child from going to detention.¹⁸⁷ DiTraglia asserts that the damage done to a child who is put in a detention center for a month, and not sent home, is much different than the harm done to an adult in the adult system.¹⁸⁸ Adequate counsel is important to determine whether or not

180. Interview with Caterina DiTraglia, *supra* note 123 (stating that occasionally in the county the juvenile's parents would be able to hire a private lawyer, but in the city, the Youth Advocacy Unit would cover almost all of the cases brought in front of the court); Interview with Jacqueline Kutnik-Bauder, *supra* note 153.

181. Telephone Interview with Ellen Ribaud, Assoc. Circuit Judge, 21st Judicial Circuit (St. Louis Cnty.) (Jan. 29, 2014). Today, the indigence guidelines match the Federal Poverty Guidelines, meaning that an individual making only \$11,000 would not qualify for a public defender. However, it still leaves a wide gap of ineligible defendants who, in reality, still lack the means to retain private counsel. STATE OF MO. PUB. DEFENDER COMM'N, FISCAL YEAR 2013 ANNUAL REPORT 1 (2013) [hereinafter 2013 MSPD ANNUAL REPORT].

182. Telephone Interview with Ellen Ribaud, *supra* note 181.

183. Interview with Jacqueline Kutnik-Bauder, *supra* note 153.

184. *Id.*

185. Interview with Caterina DiTraglia, *supra* note 123.

186. *Id.*

187. *Id.*

188. *Id.*

the prosecution can prove its case, and if not, the attorney can possibly protect the child from an unfavorable conviction.¹⁸⁹

While the Youth Advocacy Unit provided advocates with specialized juvenile training and resources, the unit's most noteworthy asset was the juvenile dispositional specialist, who was responsible for developing client-driven disposition plans and placement options.¹⁹⁰ The disposition was an important stage for advocates in the unit because this was the first time counsel had the opportunity to litigate the question of what was the best treatment option for a convicted child.¹⁹¹ Before the Youth Advocacy Unit, if the disposition was disliked or unfavorable to the client, defenders would simply cross-examine the DJO, but the defender would almost never offer any alternatives or other options for the court to consider.¹⁹² There was a "pre-unit" assumption that the dispositional phase involved social work, which is not part of an attorney's job, so the attorney did not take part in the child's disposition.¹⁹³ However, advocates in the Youth Advocacy Unit took the position that disposition is part of the entire litigation of the juvenile's case, so the attorney has an additional impact in the disposition stage.¹⁹⁴ With this view, the unit started presenting its juvenile clients differently to the court, by bringing in dispositional specialists to explain how the juvenile would benefit from an alternative approach.¹⁹⁵ The disposition specialist, acting as an expert for the court, was able to conduct social investigations and locate available resources to help the juvenile client with treatment needs.¹⁹⁶ For example, Kutnik-Bauder explained, if the DJO suggested the juvenile should go to the Division of Youth Services (DYS) because the juvenile had been previously on probation, the dispositional specialist would go out and meet with the family.¹⁹⁷ If the dispositional specialist found that the child had a drug problem, they would offer a drug treatment program as an alternative to going

189. *Id.* (stressing the difficulties of children moving forward from their convictions—for example, children with convictions have a harder time getting jobs and they could possibly get kicked out of public schools, leaving them with no education at all).

190. NJDC ASSESSMENT, *supra* note 1.

191. Interview with Caterina DiTraglia, *supra* note 123.

192. Interview with Jacqueline Kutnik-Bauder, *supra* note 153.

193. Interview with Caterina DiTraglia, *supra* note 123.

194. *Id.*

195. Interview with Jacqueline Kutnik-Bauder, *supra* note 153.

196. *Youth Advocacy*, *supra* note 150 (stating the dispositional specialists have master's degrees in social work and counseling and testify in court about treatment needs and alternatives on behalf of the Youth Advocacy Unit's juvenile clients).

197. Interview with Jacqueline Kutnik-Bauder, *supra* note 153 ("DYS is the equivalent to a prison system in Missouri."); *Division of Youth Services*, MO. DEP'T OF SOC. SERVS., <http://www.dss.mo.gov/dys/> (last visited Feb. 4, 2014) (stating DHS is the state agency charged with the treatment of delinquent youth committed to its custody by the juvenile courts).

to a facility.¹⁹⁸ The dispositional specialist made possible the way the children were sentenced¹⁹⁹ by doing research and finding sources that the attorney did not have or may not have had time to find.²⁰⁰ The value of the dispositional specialist was not just to find alternatives for disposition, but also to help the defenders prepare a defense and find mitigating evidence to keep the juvenile out of the adult system.²⁰¹

For instance, Kutnik-Bauder recalls one particular case where the dispositional specialist was crucial to the juvenile's future.²⁰² The juvenile was about fifteen years old when she became involved with an older man and started robbing banks in both Missouri and Illinois.²⁰³ She was arrested in Illinois and was sentenced to two years in the Illinois juvenile system.²⁰⁴ During the time she served in Illinois, she came to be known as a "model prisoner"—someone who really made a change from her experience in the system.²⁰⁵ The juvenile was released from detention in Illinois when she was seventeen years old.²⁰⁶ However, Missouri knew that she had been sentenced in Illinois and chose not to file charges against her until she was released.²⁰⁷ The juvenile was transferred to the Missouri juvenile court system, which in turn wanted to certify her as an adult for felony bank robbery, claiming there was a lack of services available for her because she was seventeen and too old for the juvenile programs.²⁰⁸ Ironically, Missouri created this situation by not pursuing charges against her earlier.²⁰⁹ Kutnik-Bauder held a daylong certification hearing and had the psychologist from the juvenile's program in Illinois testify about how well she had done and the situation she was in by the manipulation of an older man.²¹⁰ Kutnik-Bauder also had someone from Missouri's DYS talk about the programs they had in which they could keep the juvenile until she was twenty-one years old.²¹¹ With the help from the dispositional specialist, Kutnik-Bauder successfully persuaded the court not to certify the juvenile as an adult.²¹² The juvenile was sentenced to only one year

198. Interview with Jacqueline Kutnik-Bauder, *supra* note 153.

199. Telephone Interview with Ellen Ribaud, *supra* note 181.

200. *Id.*

201. Interview with Patricia Harrison, *supra* note 154.

202. Interview with Jacqueline Kutnik-Bauder, *supra* note 153.

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. Interview with Jacqueline Kutnik-Bauder, *supra* note 153.

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

in DYS.²¹³ Before the Youth Advocacy Unit, an attorney most likely would not have brought in additional witnesses and the juvenile's dispositional outcome would probably have been very different.

In the years before the Youth Advocacy Unit existed, many attorneys forwent deposing witnesses or other traditional forms of discovery.²¹⁴ However, the Youth Advocacy Unit changed that practice. Advocates in the unit began doing discovery requests, filing writs, and appealing more cases to a higher court.²¹⁵ For example, Dan Underwood, who was an attorney for and became a director of the Youth Advocacy Unit, argued a case of first impression on extradition and competency to the Missouri Supreme Court.²¹⁶ In 2001, Joe Reed was brought to St. Louis City juvenile court on various felony charges.²¹⁷ While awaiting adjudication, the state of Illinois sought to have Joe extradited because he was accused of armed robbery and aggravated vehicular hijacking in East St. Louis, Illinois.²¹⁸ During the course of proceedings to certify Joe to stand trial as an adult, questions arose about whether Joe was competent to understand the proceedings and his extradition out of the state of Missouri.²¹⁹ Joe was evaluated by two different psychiatrists, one procured by Underwood and one by the Missouri Department of Mental Health; both determined that Joe lacked capacity to participate in the certification hearing.²²⁰ However, the circuit judge denied Joe a competency hearing.²²¹ Advocating for Joe, Underwood appealed to the Missouri Supreme Court to stay the extradition and to request a competency hearing, arguing that it was a violation of Joe's constitutional right to effective assistance of counsel if they extradited him without first determining his competency.²²² The Missouri Supreme Court remanded and held that the trial court was prohibited from moving forward with the hearing without first determining Joe's competency.²²³ The court particularly noted that the right to counsel is an "empty formality" if it is not also assumed to be effective.²²⁴ Juveniles do not

213. *Id.*

214. Interview with Jacqueline Kutnik-Bauder, *supra* note 153.

215. *Id.*

216. ROBERT H. DIERKER, 28 MISSOURI PRACTICE SERIES: MISSOURI CRIMINAL PRACTICE HANDBOOK § 6:7 (2013 ed.) (defining extradition as the transfer of an arrestee from the jurisdiction of the "asylum state" to that of the "demanding state"); Interview with Dan Underwood, *supra* note 173.

217. State *ex rel.* Reed v. Frawley, 59 S.W.3d 496, 497 (Mo. 2001); Interview with Dan Underwood, *supra* note 173.

218. Reed, 59 S.W.3d at 497; Interview with Dan Underwood, *supra* note 173.

219. Reed, 59 S.W.3d at 497; Interview with Dan Underwood, *supra* note 173.

220. Reed, 59 S.W.3d at 497-98; Interview with Dan Underwood, *supra* note 173.

221. Reed, 59 S.W.3d at 498; Interview with Dan Underwood, *supra* note 173.

222. Reed, 59 S.W.3d at 498.

223. *Id.* at 500; Interview with Dan Underwood, *supra* note 173.

224. Reed, 59 S.W.3d at 499.

need a “warm body” to represent them in court; they need effective counsel who will go to great lengths to advocate their case in detail.

In addition to providing more traditional representation to juveniles, the Youth Advocacy Unit also reduced the number of adult certifications and DYS commitments.²²⁵ In 2001, Missouri had 121 certifications to adult court,²²⁶ while in 2005, two years before the Youth Advocacy Unit disbanded, Missouri only had sixty-eight certifications.²²⁷ Certifying less juveniles also had an impact on recidivism. Studies have shown that children placed in the adult prison system have higher rates of recidivism than comparable children incarcerated in the juvenile system for the same offenses.²²⁸ Thus, certifying children and placing them in adult prison does not prevent children from committing crimes.²²⁹ Additionally, if a juvenile was certified, the Youth Advocacy Unit was able to provide the same defender who represented him or her in juvenile court to litigate the juvenile’s certification proceedings and jury trial in the adult system.²³⁰ Familiarity with the case and consistency for the child is a large part of juvenile representation,²³¹ and the Youth Advocacy Unit recognized this importance.

However, even during the unit’s prime, Patricia Harrison, who was the unit’s director from 2000–2002, could sense things in the Youth Advocacy Unit starting to turn.²³² As the Public Defender Commission started asking questions about juvenile caseloads and expressed a need to spread its resources wider, Harrison knew the philosophy of the public defender was shifting.²³³ After Harrison, Dan Underwood became the director of the unit from 2002–2005.²³⁴ Underwood also recognized changes over the time he was there.

225. NJDC ASSESSMENT, *supra* note 1; *Division of Youth Services*, MO. DEP’T OF SOC. SERVS., <http://www.dss.mo.gov/dys> (last visited May 5, 2014) (“DYS is the state agency charged with the care and treatment of delinquent youth committed to its custody by one of the 45 Missouri juvenile courts,” and DYS programs include assessment, care and treatment, and education, ranging from treatment centers to secure residential institutions).

226. MO. DIV. OF YOUTH SERVS., MO. DEP’T OF SOC. SERVS., MISSOURI 2001 JUVENILE COURT STATISTICS REPORT 8.

227. STATE OF MO. PUB. DEFENDER COMM’N, FISCAL YEAR 2005 ANNUAL REPORT: ASSURING THE PUBLIC DEFENSE—THE RIGHT TO COUNSEL AND THE STATE PUBLIC DEFENDER SYSTEM IN MISSOURI 51 (2005).

228. Anna-Elise Price, *Trying Kids as Adults: False Perceptions, Poor Solutions*, in MSPD YOUTH ADVOCACY UNIT: SOWING THE SEEDS OF DEFENSE 1997-1998, at 4 (1998).

229. *Id.*

230. Telephone Interview with Ellen Ribaud, *supra* note 181.

231. *Id.*

232. Interview with Patricia Harrison, *supra* note 154.

233. *Id.* (Harrison noted that the change in philosophy was not because the commission did not care about juveniles, but because the budget was getting cut and it did not have as much money to disperse to the unit).

234. Interview with Dan Underwood, *supra* note 173.

When Underwood arrived as an attorney in 1999, the Youth Advocacy Unit had eight attorneys plus a district defender, dispositional specialists, and investigators; when he left in 2005, the unit was down to four attorneys and a district defender.²³⁵ During this time, the state of Missouri was in the middle of a drastic budget crisis, which cut the MSPD's budget, which in turn cut the Youth Advocacy Unit's social work support for children and scaled back the investigative support.²³⁶ The four attorneys left in the unit started receiving higher caseloads, and a regression occurred, as judges once again began certifying more children.²³⁷ Finally, in 2007, the Youth Advocacy Unit fell victim to the state's budget cuts and the unit's caseload was absorbed into the MSPD general trial division.²³⁸ The MSPD's new attorneys were brought in to handle the juvenile cases while simultaneously managing another caseload in the adult system.²³⁹

In the years the Youth Advocacy Unit was in existence (1997–2007), the MSPD was assigning, on average, over 4,000 juvenile cases to the unit.²⁴⁰ Just one year after the unit dissipated, the MSPD only assigned 2,715 juvenile cases to the trial division, almost half of what they were assigning when the unit was in existence.²⁴¹ The Public Defender Commission noted in its 2007 report, “The [Youth Advocacy Unit was] doing good work; however, with the shortage of resources in the rest of the system, the extra resources devoted to juvenile practice could no longer be supported.”²⁴² The commission stated there was nowhere else MSPD could eliminate, reduce, or change to strengthen the system.²⁴³ It also recognized that the elimination of the Youth Advocacy Unit was a major step backward and a failure of Missouri's public defender system.²⁴⁴

V. YOUTH'S COUNSEL IN MISSOURI'S JUVENILE COURT TODAY

Despite numerous reform efforts, federal law, and the renowned Supreme Court cases, Missouri is still struggling to effectively implement juveniles'

235. *Id.*

236. *Id.*

237. *Id.*

238. NJDC ASSESSMENT, *supra* note 1, at 54.

239. Interview with Patricia Harrison, *supra* note 154.

240. 2013 MSPD ANNUAL REPORT, *supra* note 181, at 4.

241. *Id.*

242. NJDC ASSESSMENT, *supra* note 1, at 36–37 (quoting STATE OF MO. PUB. DEFENDER COMM'N, FISCAL YEAR 2007 ANNUAL REPORT 66 (2007)).

243. *Id.* at 37 (quoting STATE OF MO. PUB. DEFENDER COMM'N, FISCAL YEAR 2007 ANNUAL REPORT 66 (2007)).

244. *Id.* (quoting STATE OF MO. PUB. DEFENDER COMM'N, FISCAL YEAR 2007 ANNUAL REPORT 66 (2007)).

right to counsel, almost half a century after the *Gault* decision.²⁴⁵ On November 19, 2013, the Justice Department announced a federal investigation into the St. Louis County Family Court for potential violations of juveniles' constitutional rights.²⁴⁶ In particular, the department announced that it was examining whether Missouri's largest circuit court provides due process to all juveniles appearing for delinquency hearings and whether its juvenile court system engages in a "systematic pattern or practice that causes harm."²⁴⁷ Missouri's juvenile justice system has been criticized for failing to adequately represent juveniles facing court action.²⁴⁸ "A National Juvenile Defender Center report said Missouri juvenile courts discourage juveniles from talking to a legal representative, fail to protect their rights, and employ staff members with conflicted roles."²⁴⁹

Ironically, Missouri's rehabilitative juvenile correctional program, known as the "Missouri Model," is nationally recognized for its progressive approach and its success.²⁵⁰ This model may offer some pretext as to why the adequacy of juvenile representation in Missouri seems to be neglected. Particularly, the Missouri Model has generated extremely low recidivism rates for juvenile offenders in Missouri;²⁵¹ even other states are using this approach and receiving positive results.²⁵² From 2005 through the first half of 2007, Missouri managed to reduce its adult prison population by applying techniques from the Missouri Model.²⁵³ The model's approach is to improve its juvenile corrections system by focusing on the juvenile offenders who must be removed from the community and placing them in small, regionally dispersed facilities, as

245. *Id.* at 16.

246. Robert Patrick, *Justice Department Investigating St. Louis County Family Court*, ST. LOUIS POST DISPATCH, Nov. 19, 2013, http://www.stltoday.com/news/local/crime-and-courts/justice-department-investigating-st-louis-county-family-court/article_91f4c468-3d1d-5454-abe6-42c7f7f4d90d.html.

247. Alan Scher Zagier, *Feds Investigate St. Louis County Family Court*, CBS ST. LOUIS, Nov. 19, 2013, <http://stlouis.cbslocal.com/2013/11/19/feds-investigate-st-louis-county-family-court/>.

248. Patrick, *supra* note 246.

249. Patrick, *supra* note 246.

250. NJDC ASSESSMENT, *supra* note 1, at 11.

251. See RICHARD A. MENDEL, THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS 6 (2010). See also, SUPREME COURT OF MO. OFFICE OF STATE COURTS ADM'R (OSCA), MISSOURI JUVENILE & FAMILY DIVISION ANNUAL REPORT CALENDAR 2012, at 37 (2012), available at <http://www.courts.mo.gov/file.jsp?id=62834> (defining a juvenile recidivist as "any youth, referred to the juvenile office for a legally sufficient law violation during a calendar year, who receives one or more legally sufficient law violations to the juvenile or adult court within one year of the initial referral's disposition date.").

252. Solomon Moore, *Missouri System Treats Juvenile Offenders with Lighter Hand*, N.Y. TIMES, Mar. 26, 2009, http://www.nytimes.com/2009/03/27/us/27juvenile.html?pagewanted=all&_r=1&_.

253. *Id.*

opposed to large, prisonlike correctional institutions.²⁵⁴ In particular, the Missouri Model is epitomized by six core characteristics: (1) placing youth who require confinement into smaller facilities, (2) placing youth into closely supervised small groups with a rigorous group treatment process, (3) emphasizing the importance of keeping youth safe from physical aggression and emotional abuse, (4) helping youth develop skills that improve their ability to succeed post-release, (5) reaching out to family members and involving them in the youth's treatment process, and (6) providing support and supervision for transitioning home from a residential facility.²⁵⁵ The Missouri Model embodies the objective of the juvenile court, which is to "provide measures of guidance and rehabilitation for the child, not to fix criminal responsibility."²⁵⁶

However, juveniles' "due process protections often lose out under the guise of rehabilitation and treatment."²⁵⁷ This is evidenced by the fact that a very high number of youth are committed to DYS for technical violations, status offenses, misdemeanors, and non-violent felony offenses. Of the 919 youth committed to DYS in 2013, 38% were committed for class C, D, and other unspecified felonies, including property offenses, drug crimes, and theft.²⁵⁸ Of that same number of youth, 37% were committed to DYS for misdemeanors and other non-felonies, and 12% were committed for juvenile offenses such as truancy and curfew violations,²⁵⁹ resulting in a 2% increase from 2012.²⁶⁰ The fact that the majority of youth committed to DYS are there for non-violent, low-level offenses and technical violations emphasizes the need for adequate juvenile representation.²⁶¹

While Missouri is a well-known national leader for its innovative, rehabilitative juvenile corrections programs,²⁶² its juvenile court system today is far from exemplary. Attorneys representing juveniles must be well-trained and qualified to make sure that the needs and best interests of the child are appropriately met. Recently, in 2010, the Supreme Court noted in its *Graham v. Florida* decision that there are special difficulties attorneys encounter when

254. See MENDEL, *supra* note 251, at 5.

255. *Id.* at 13–15.

256. *Kent v. United States*, 383 U.S. 541, 555 (1966).

257. NJDC ASSESSMENT, *supra* note 1.

258. DIV. OF YOUTH SERVICES, MO. DEP'T OF SOC. SERVICES, ANNUAL REPORT FISCAL YEAR 2013, at 1 (2013).

259. *Id.*

260. DIV. OF YOUTH SERVS., MO. DEP'T OF SOC. SERVS., ANNUAL REPORT FISCAL YEAR 2012, at 7 (2012).

261. NJDC ASSESSMENT, *supra* note 1, at 36.

262. *Id.* at 7.

representing juveniles.²⁶³ The characteristics that distinguish juveniles from adults also put them at a disadvantage in criminal proceedings.²⁶⁴ Juveniles mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it.²⁶⁵ Correspondingly, juveniles are less likely than adults to work effectively with their attorneys to prepare their defense.²⁶⁶ Even a juvenile who has violated the law may not feel that he or she is being fairly treated and may resist the rehabilitative efforts of court personnel.²⁶⁷ Thus, juvenile defenders require specialized knowledge and understanding of adolescence and the ability to engage their youthful clients in making effective decisions toward their defense.²⁶⁸

Hence, it is essential for the public defender system to appreciate that children and adolescents differ from adults in significant ways.²⁶⁹ Common sense dictates that most children are ill-equipped to understand, manage, or navigate the complexities of the court system on their own.²⁷⁰ Many juveniles are unable to understand their legal rights, which suggests an even greater need for an attorney²⁷¹ who is trained and experienced to make skilled inquiries into the facts and to “cope with problems of law.”²⁷² Additionally, every professional working with the juvenile also should have a basic understanding of adolescent brain development.²⁷³ Adolescence is a time of enhanced vulnerability.²⁷⁴ Research has shown that youth are generally more compliant and vulnerable to coercion from adults.²⁷⁵ When juveniles are faced with the stress and pressures of the court system, they may appear defiant; however, in actuality they may just be overwhelmed with too much information.²⁷⁶

263. *Graham v. Florida*, 130 U.S. 2011, 2032 (2010). The Court forbade life sentences of life without parole for juveniles not convicted of murder. *Id.* at 2034.

264. *Id.* at 2032.

265. *Id.*

266. *Id.*

267. *In re Gault*, 387 U.S. 1, 26 (1967) (quoting STANTON WHEELER ET AL., JUVENILE DELINQUENCY: ITS PREVENTION AND CONTROL 33 (1966)).

268. NJDC ASSESSMENT, *supra* note 1, at 11; NATIONAL JUVENILE DEFENSE STANDARDS, *supra* note 21, at 9.

269. NJDC ASSESSMENT, *supra* note 1, at 17.

270. Levick & Desai, *supra* note 15, at 191; *Why is it so important for youth in delinquency cases to have lawyers and strong indigent defense systems?*, Key Issues, JUVENILE JUSTICE INFO. EXCH., <http://jjie.org/hub/juvenile-indigent-defense/key-issues/> (last visited Nov. 13, 2011) [hereinafter JUVENILE JUSTICE INFORMATION EXCHANGE].

271. Levick & Desai, *supra* note 15, at 192.

272. McMillian & McCutry, *supra* note 32, at 564.

273. Linda Burgess Chamberlain, *The Amazing Teen Brain: What Every Child Advocate Needs to Know*, 28 A.B.A. CHILD L. PRAC. 17, 17 (2009).

274. *Id.*

275. Levick & Desai, *supra* note 15, at 191–93.

276. Chamberlain, *supra* note 273, at 18.

Juveniles may not be able to respond rationally when asked certain questions because they react impulsively without thinking things through first.²⁷⁷ The thought patterns and skills for rational thinking and decision-making are still developing and do not mature until a person reaches their early twenties.²⁷⁸ Furthermore, the region of the brain regulating judgment is not fully mature during the adolescent years,²⁷⁹ thus impairing a young person's ability to understand the consequences of his or her choices.²⁸⁰ Juveniles perceive risk differently than adults and are more enticed by the novelty of the incident.²⁸¹ "They have a higher sensitivity to reward which means that when [juveniles] take a risk and win the reward, they are more driven to keep taking that risk over and over again even when that strategy does not work anymore."²⁸² Consequently, juveniles are more likely to focus on presumed short-term gains, not realizing how their decisions will affect their future.²⁸³

Even though a specialized knowledge of juveniles is essential to their representation, the attorneys in Missouri's current juvenile system are under-resourced and lack sufficient training in juvenile representation. The lack of resources is due, in part, to the fact that the general revenue of the MSPD is less than half of 1 percent of the state's General Revenue Appropriation.²⁸⁴ Findings were also reported that the MSPD had the lowest per capita expenditure of all statewide public defender systems.²⁸⁵ As a result, today, there is only one district defender assigned to juveniles in St. Louis City and one district defender assigned to St. Louis County.²⁸⁶ Even though St. Louis

277. *Id.* (stating that teens lack a mature prefrontal cortex in their brain which is responsible for impulse control).

278. *Id.* (explaining that teens lack the "hardware" in the brain to think like adults). The outer covering of the brain, the cortex, is responsible for reason, logic, and rational thinking and goes through extensive remodeling during adolescence. The prefrontal cortex, responsible for judgment, impulse control, problem-solving, and other essential skills, goes through a growth spurt around the age nine or ten. This area of the brain then goes through extensive measures to eliminate unused brain connections. The pre-frontal cortex will not mature until the early twenties when brain connections get a final coating of insulation, called myelin, which increases the brain's speed and efficiency. *Id.*

279. *Using Adolescent Brain Research to Inform Policy: A Guide for Juvenile Justice Advocacy*, NAT'L JUVENILE JUSTICE NETWORK (2012), http://www.njjn.org/uploads/digital-library/Brain-Development-Policy-Paper_Updated_FINAL-9-27-12.pdf.

280. JUVENILE JUSTICE INFORMATION EXCHANGE, *supra* note 270.

281. Chamberlain, *supra* note 273, at 23.

282. *Id.* at 23–24.

283. JUVENILE JUSTICE INFORMATION EXCHANGE, *supra* note 270 (asserting that because it is commonly recognized that juveniles may not fully understand the consequences of their actions, courts should take "special care" in scrutinizing a purported confession or waiver by a child).

284. 2013 MSPD ANNUAL REPORT, *supra* note 181, at 9.

285. NJDC ASSESSMENT, *supra* note 1, at 33.

286. Interview with Patricia Harrison, *supra* note 154.

City's juvenile case files have gone down exponentially, some juvenile cases still get contracted out to private attorneys²⁸⁷ due to the juvenile defenders not having the resources to keep up with their growing caseloads. In addition to their juvenile conflict cases, the private attorneys manage a caseload in the adult system at the same time.²⁸⁸ Since the private attorneys have adult clients with presumably more serious cases, the juvenile cases tend to receive the least amount of the attorney's time.²⁸⁹

In 2012, there were 80,588 new cases opened in the MSPD trial division,²⁹⁰ but only 1,923 were juvenile delinquency or status offender cases.²⁹¹ This means that juvenile cases amounted to only 2.36% of the MSPD's assigned cases.²⁹² Even less juvenile cases were assigned in 2013, when the MSPD assigned 73,666 cases to the trial division, and of the 4,051 new juvenile delinquency and status offense petitions statewide,²⁹³ the MSPD was assigned only 1,670 juvenile delinquency and status offender cases.²⁹⁴ Even during the Youth Advocacy Unit's dismissal, the MSPD assigned 3,380 juvenile cases to the unit and its advocates the year it dissipated—almost two times as many as the following years.²⁹⁵ The numbers alone display how the Youth Advocacy Unit was a valuable resource in being adept to handle large juvenile caseloads.

Accordingly, the old model of juvenile representation, in place before the Youth Advocacy Unit's existence, is beginning to make an appearance again in Missouri's juvenile system today. Unlike the advocates in the Youth Advocacy Unit, today public defenders do not interview the juvenile while he or she is in the detention center, before going to the detention hearing.²⁹⁶ The defender usually meets the child for the first time in court on the day of the hearing,²⁹⁷ leaving the attorney very little time to review the juvenile's case. The appointment of counsel is made so late that it is difficult to prepare and provide effective advocacy because "the attorneys only have minutes before the

287. NJDC ASSESSMENT, *supra* note 1, at 33; Interview with Patricia Harrison, *supra* note 154.

288. Interview with Patricia Harrison, *supra* note 154.

289. *Id.*

290. STATE OF MO. PUB. DEFENDER COMM'N, FISCAL YEAR 2012 ANNUAL REPORT 8 (2012).

291. *Id.* at 9.

292. *Id.* at 8.

293. Table 41: Circuit Court FY 2013 Juvenile Cases Filed by Case Type, OFFICE OF STATE COURTS ADMIN., <http://www.courts.mo.gov/file.jsp?id=68895> (last visited Feb. 19, 2014).

294. 2013 MSPD ANNUAL REPORT, *supra* note 181, at 2.

295. *Id.* at 4.

296. Interview with Dan Underwood, *supra* note 173.

297. NJDC ASSESSMENT, *supra* note 1, at 43; Interview with Patricia Harrison, *supra* note 154.

hearing to talk with their clients, . . . investigate probable cause, and investigate alternatives to detention.”²⁹⁸

Today, there are no concerted attempts to incorporate the concepts of the Youth Advocacy Unit into current representation of juveniles.²⁹⁹ In the dispositional phase, there is less advocacy than there was when the Youth Advocacy Unit was in place.³⁰⁰ Defenders are no longer using dispositional specialists or regularly offering alternatives to the DJO’s disposition.³⁰¹ Now, it is a very different model.³⁰² The defenders simply cross-examine the DJO and sometimes will bring in the parents to testify that they want their child home and about the efforts the parents will put forth at home for their child.³⁰³ When juveniles feel as if their voice has not been heard, they are less likely to engage in the consequences of the final disposition.³⁰⁴ However, if juveniles feel like the judge really heard them, their case was presented, and they were fully advocated for, they are more likely to engage in the court’s rehabilitative efforts.³⁰⁵ The consequences of juveniles not having a say in their disposition is much greater than the risk of the juveniles going back to prison later in life. If juveniles have a say, it may ultimately prevent them from returning to the system that the defenders are supposed to be advocating to keep them out of.

In the years after the Youth Advocacy Unit’s dissolution until just recently, new attorneys were assigned juvenile cases, using juvenile courts as “training grounds to prepare public defenders for adult cases.”³⁰⁶ Thus, juveniles were often left with an attorney with no experience and no training on how to represent juveniles. However, in the spring of 2013, the National Juvenile Defender Center conducted an assessment of Missouri’s juvenile defense representation in delinquency proceedings,³⁰⁷ which revealed significant deficiencies in juvenile representation. Since the assessment, the MSPD has placed more experienced attorneys in the juvenile division.³⁰⁸ Even though the MSPD is taking a step toward improving the representation for juveniles by providing an experienced attorney, if the attorney is not receiving any resources, his or her experience is not going to make a difference.³⁰⁹

298. NJDC ASSESSMENT, *supra* note 1, at 44.

299. *Id.* at 37.

300. Interview with Patricia Harrison, *supra* note 154.

301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.*

306. NJDC ASSESSMENT, *supra* note 1, at 52.

307. *Id.* at 1.

308. Interview with Patricia Harrison, *supra* note 154.

309. *Id.*

Thus, the representation that defenders provide to juvenile clients must parallel the comprehensive representation provided to adults.³¹⁰ The juvenile needs adequate assistance of counsel to cope with problems of law, insist upon regularity of the proceedings, and to prepare and submit a defense.³¹¹

VI. CONCLUSION

Although many of Missouri's efforts may be intended to further the best interests of its youth, their legal right to counsel is still being ignored. Because of the lack of funding to stabilize the Youth Advocacy Unit, or divisions with similar purposes, juveniles are being denied their constitutional rights, thus making institutional cases like *In re Gault* irrelevant. Missouri's most proficient resource in carrying out *Gault*'s mandate to counsel was the Youth Advocacy Unit. The unit was responsible for lowering attorney's juvenile caseloads and providing more resources to support a juvenile's disposition—carrying the philosophy that this would keep juveniles out of institutions like DYS.³¹² The unit was also responsible for reducing the number of children transferred to adult court and increasing public awareness of juvenile law.³¹³ When the Youth Advocacy Unit disbanded, there was an instant switch back to the old juvenile justice system model.³¹⁴ Today, the theory is to have experienced lawyers in the juvenile division, but the attorneys have higher caseloads and lack the resources to present alternatives to detention. This strays away from the juvenile court's original philosophy that keeping children out of institutions is beneficial to the child.³¹⁵ Regardless of whether Missouri's rehabilitation centers are nationally recognized, the current lack of adequate counsel makes Missouri youth's constitutional rights dependent on funding. Access to adequate counsel is not only for adults or juveniles whose family can afford it.³¹⁶ Access to adequate counsel should be for everybody.

ALYSSA CALHOUN*

310. GARY KATZMAN, SECURING OUR CHILDREN'S FUTURE: NEW APPROACHES TO JUVENILE JUSTICE AND YOUTH VIOLENCE 92 (2002).

311. *In re Gault*, 387 U.S. 1, 36 (1967).

312. Interview with Patricia Harrison, *supra* note 154.

313. NJDC ASSESSMENT, *supra* note 1, at 25.

314. Telephone Interview with Ellen Ribaud, *supra* note 181.

315. Interview with Patricia Harrison, *supra* note 154.

316. Interview with Dan Underwood, *supra* note 173.

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