

Internal Operating Policy 37-06

Submitted by Director to the Georgia Public Defender Standards Council: 08/25/2006

Approved by Standards Council: 08/25/2006

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Authority: O.C.G.A. § 17-12-5(c) (2)¹

Subject: Representation of Parents in Juvenile Delinquency Proceedings.

This policy is in response to a question raised as a result of the recent Court of Appeals opinion of In the interest of J.L.B. (A06A0910, July 14, 2006) (herein referred to as “JLB”). The question is whether the circuit public defender is required under the Georgia Indigent Defense Act of 2003 (herein referred to as “the Act”) to provide representation to parents in juvenile delinquency proceedings. It is the Standards Council’s position that JLB does not require the circuit public defender to undertake the parents’ representation.

The Court in JLB held that the parents have a right to appeal on their own behalf the adjudication of delinquency because they are considered to be necessary parties to the proceeding. The Court reasoned that the parents are necessary parties because of the consequences to the parents if their child was adjudicated to be delinquent. The Court stated “[t]he parents’ status as necessary parties to a delinquency action implicitly recognizes that the parents are the natural custodians of their child and that, upon an adjudication of delinquency and the court’s issuance of a dispositional order, the consequences of complying with the order will fall on both the parents and their child. The consequences to the parents may include temporarily losing custody of their child, being required to participate in counseling with their child, being required to pay counseling or supervision fees, and being required to reimburse the county for the cost of a court-appointed attorney and a guardian ad litem, as well as the cost of evaluating, detaining, and treating their child.” The Court further stated that “if the parents fail to

¹ O.C.G.A. § 17-12-5 (c) (2) provides as follows: “(c) The director shall...(2) Develop such rules, policies, procedures, regulations, and standards as may be necessary to carry out the provisions of this chapter and comply with all applicable laws, standards, and regulations, and submit these to the council for approval”.

appear in court for a delinquency proceeding or violate any court order arising from the proceeding, the court may punish the parents for contempt by requiring them to pay fines or restitution, reimburse the state for the cost of detention or treatment of the child, or even perform community service.” Consequently, the Court found that because the parents were necessary parties to the proceeding, they were entitled to appeal on their own behalf and were entitled to counsel.

The Court cited the general right to counsel provisions in Title 15 as they relate to all parties and in all juvenile proceedings.

O.C.G.A. § 15-11-6 Right to Counsel provides as follows:

“(a) *‘Indigent person’ defined.* An indigent person is one who at the time of requesting counsel is unable without undue financial hardship to provide for full payment of legal counsel and all other necessary expenses for representation.

(b) *Right to legal representation.* Except as otherwise provided under this article, a party is entitled to representation by legal counsel at all stages of any proceedings alleging delinquency, unruliness, incorrigibility, or deprivation and if, as an indigent person, a party is unable to employ counsel, he or she is entitled to have the court provide counsel for him or her. If a party appears without counsel, the court shall ascertain whether such party knows of his or her right to counsel and to be provided with counsel by the court if he or she is an indigent person. The court may continue the proceeding to enable a party to obtain counsel and shall provide counsel for an unrepresented indigent person upon the request of such a person. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more parties conflict, separate counsel shall be provided for each of them.”

The Court did not reference the Act, nor did It specify who would be responsible for the cost of providing counsel. However, the counties have historically paid the cost of indigent counsel under O.C.G.A. § 15-11-6. In JLB, the Court listed reimbursing the counties for the cost of counsel as a consequence for the parents. The Court also cited to statutes where certain expenses would be charged to the counties.

To answer the question of whether the circuit public defender is required to provide representation to the parents and other necessary parties in juvenile delinquency proceedings, we look at the actions of the legislature when it passed the Act and the statute. “An administrative body, created by an act of the legislature, has only such powers as are expressly or by necessary implication conferred upon it,” Floyd County Board of Comm’rs v. Floyd County Merit System Board, 246 Ga. 44 (1980). The Act

was adopted by the General Assembly after considerable debate and much revision. The original legislation (SB 102) had the State picking up the cost and responsibility of representing indigent defendants in all criminal cases and in a wide range of proceedings including habeas actions and deprivation proceedings. However, the legislature decided to limit the State's responsibility. Therefore, the Act was passed with the State providing representation in the limited areas stated in subsection (a) of O.C.G.A. § 17-12-23.

O.C.G.A. § 17-12-23 (a) provides as follows:

“(a) The circuit public defender shall provide representation in the following actions and proceedings:

- (1) Any case prosecuted in a superior court under the laws of the State of Georgia in which there is a possibility that a sentence of imprisonment or probation or a suspended sentence of imprisonment may be adjudged;
- (2) A hearing on a revocation of probation in a superior court;
- (3) Any juvenile court case where the juvenile may face a disposition of confinement, commitment, or probation; and
- (4) Any direct appeal of any of the proceedings enumerated in paragraphs (1) through (3) of this subsection.”

O.C.G.A. § 17-12-23 (a) (3) specifically states that the circuit public defender will provide representation in any case where the “juvenile” may face a disposition of confinement, commitment, or probation. The right to counsel provided by the State is attached to the juvenile, not to any necessary party to the proceeding. Moreover, the other areas where the circuit public defender shall provide representation are all proceedings where the defendant would face possible confinement. The legislature specifically excluded habeas actions and deprivation cases from the Act. The intent of the Act was to cover those who were actually facing the possibility of confinement or detention, not anyone who may be faced with other types of loss. The Act further limits the responsibility of the circuit public defender by not covering defendants who are charged with criminal offenses in courts other than the superior court.

Additionally, O.C.G.A. § 17-12-23 (a) (4) states that the circuit public defender shall provide representation to any appeals of any of the proceedings enumerated in the Code Section which includes subsection (3). Therefore, representation in the direct appeals is derived from the juvenile's right to counsel.

Except for those areas specifically enumerated in O.C.G.A. § 17-12-23 (a), the responsibility for providing indigent defense remains with the counties.

In conclusion, it is the Standards Council's position and policy that the circuit public defender is not required under the Act to represent the parents in a delinquency proceeding. This policy does not address the situation where the county may contract with the circuit public defender to provide representation in this area.