

**Testimony on behalf of  
American Bar Association  
Juvenile Justice Committee  
Criminal Justice Section**

before the

**MARYLAND HOUSE JUDICIARY COMMITTEE**

on  
House Bill 994  
Juvenile Law - Competency

March 4, 2004

The Juvenile Justice Committee of the American Bar Association's Criminal Justice Section greatly appreciates Delegate Kathleen Dumais' invitation to submit testimony on House Bill 994 regarding competency determinations for juveniles in Maryland's justice system. We are delighted to have the opportunity to comment on this critically important issue for Maryland's youth.

The American Bar Association is the world's largest voluntary professional membership organization, and for over 125 years it has placed a high priority on promoting justice that requires fair treatment and is based on sound reason. The Juvenile Justice Committee works specifically to improve the administration of justice for youth. This commitment spans over three decades, beginning in the early 1970s with the promulgation of the *Institute for Judicial Administration/American Bar Association Juvenile Justice Standards*. These Standards were the result of over a decade of critical thought, discussion, writing and editing by over 300 multidisciplinary experts leading to 23 volumes addressing the administration of juvenile justice. The fundamental objective guiding these experts was that the Standards be designed to establish a stable and enduring juvenile justice system for our society, not to fluctuate in response to transitory headlines or controversies.

In addition to the *IJA/ABA Juvenile Justice Standards*, ABA policy has consistently supported upgrades, reforms and improvements to the juvenile justice system. Through the work of the Juvenile Justice Center, an outgrowth of the expanding work of the Committee, a balanced and thoughtful approach to legislative, judicial and executive agency reform has been at work, supporting juvenile justice practices that are just and fair. It is within this framework that we support the proposed legislation setting forth guidelines for initiating and conducting competency proceedings for juveniles.

**Juvenile Competency**

American Bar Association policy strongly supports the notion that youth should be treated differently from adults and that their age, trauma, immaturity and disability should be considered at every phase of the court process. The IJA/ABA Standards recognize that one of the purposes

of a juvenile delinquency code is “to recognize the unique physical, psychological, and social features of young persons in the definition and application of delinquency standards.” (Sanctions §1.1D). We know that youth are dissimilar at different stages of their development and may be distinctly different from each other even during the same stage of development. These differences may be exacerbated by the presence of learning and mental disorders. Furthermore, dysfunctional families and association with antisocial peer groups can also impact significantly on the youth’s ability to function effectively within the unfamiliar environment of the criminal justice system. Thus, it is vital that when there is reason to believe a youth may be incompetent to proceed, individualized assessments be conducted by a qualified expert, as HB 994 delineates.

Maryland House Bill 994 is an important step in providing individualized justice for Maryland’s youth. The legislation would require the qualified expert preparing the competency report to review “all available medical, educational, and court records concerning the child and the child’s case” and consider “the child’s age, maturity level, developmental stage, and decision-making capabilities” among other factors. It is only upon consideration of this variety of factors that an expert can adequately assess an individual youth’s competency.

In 2002 the ABA adopted policy on Youth in the Criminal Justice System. This policy articulates the ABA’s concern that competency be more than the ability to understand the words used in court, but that youth “fully appreciate their rights or are able to make rational decisions about them.” The Youth in the Criminal Justice System policy holds that “for any youth fourteen years old or younger, and for any youth over the age of fourteen whose competency is put at issue, the court should order an evaluation of the youth’s competency to stand trial or waive any rights. The evaluation should be conducted by a psychiatrist or clinical psychologist who is specifically qualified by training and experience in the evaluation of children and adolescents. This evaluation should assess the capacity of the youth 1. to understand the proceedings; 2. to assist defense counsel; and 3. to make a meaningful decision about the waiver of substantial rights.” (ABA Policy on Youth in the Criminal Justice System, Adopted 2/02).

House Bill 994 would insure the “appreciation” necessary for a youth’s competency by requiring the competency expert to consider the capacity of the child to: “1. Appreciate the allegations against the child; 2. Appreciate the range and nature of allowable dispositions that may be imposed in the proceedings against the child; 3. Understand the roles of the participants and the adversary nature of the legal process; 4. Disclose to counsel facts pertinent to the proceedings at issue; 5. Display appropriate courtroom behavior; and 6. Testify relevantly.”

## **Conclusion**

According to the IJA/ABA Standards, the purpose of the juvenile correctional system is “to reduce juvenile crime by maintaining the integrity of the substantive law proscribing certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of juveniles, and that give juveniles access to opportunities for personal and social growth.” (Dispositions §1.1). In order for the justice system to achieve these goals, it is necessary for a youth to understand and appreciate his or her role in the system and the consequences of his or her choices. By passing HB 994, the Maryland Legislature would insure not only the competency of their youth, but the effectiveness of their justice system.