

### **Rule 3. Right to Counsel**

#### **3.01 Generally**

The child has the right to be represented by an attorney. This right attaches no later than when the child first appears in court. The attorney shall initially consult with the child privately, outside of the presence of the child's parent(s), legal guardian or legal custodian. The attorney shall act solely as the counsel for the child.

#### **3.02 Appointment of Counsel**

**Subdivision 1. Delinquency Felonies and Gross Misdemeanors.** In any delinquency proceeding in which the child is charged with a felony or gross misdemeanor, the court shall appoint counsel at public expense to represent the child, if the child cannot afford counsel and private counsel has not been retained to represent the child. If the child waives the right to counsel, the court shall appoint standby counsel to be available to assist and consult with the child at all stages of the proceedings.

**Subd. 2. Delinquency Misdemeanors.** In any delinquency proceeding in which the child is charged with a misdemeanor, the court shall appoint counsel at public expense to represent the child if the child cannot afford counsel and private counsel has not been retained to represent the child, and the child has not waived the right to counsel. If the child waives the right to counsel, the court may appoint standby counsel to be available to assist and consult with the child at all stages of the proceedings.

**Subd. 3. Out-of-Home Placement.** In any proceeding in which out-of-home placement is proposed, the court shall appoint counsel at public expense to represent the child, if the child cannot afford counsel and private counsel has not been retained to represent the child. If the child waives the right to counsel, the court shall appoint standby counsel to be available to assist and consult with the child. No out-of-home placement may be made in disposition proceedings, in violation proceedings, or in subsequent contempt proceedings, if the child was not initially represented by counsel or standby counsel, except as provided herein. If out-of-home placement is based on a plea or adjudication obtained without assistance of counsel, the child has an absolute right to withdraw that plea or obtain a new trial.

**Subd. 4. Probation Violation and Modification of Disposition for Delinquent Child.** In any proceeding in which a delinquent child is alleged to have violated the terms of probation, or where a modification of disposition is proposed, the child has the right to appointment of counsel at public expense. If the child waives the right to counsel, the court shall appoint standby counsel.

#### **Subd. 5. Juvenile Petty Offense or Juvenile Traffic Offense.**

(A) In any proceeding in which the child is charged as a juvenile petty offender or juvenile traffic offender, the child or the child's parent may retain private counsel, but the child does not have a right to appointment of a public defender or other counsel at public expense, except:

(1) when the child may be subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6; or

(2) as otherwise provided pursuant to Rule 3.02, subdivisions 3, 6 and 7.

(B) Except in the discretion of the Office of the State Public Defender, a child is not entitled to appointment of an attorney at public expense in an appeal from adjudication and disposition in a juvenile petty offender or juvenile traffic offender matter.

**Subd. 6. Detention.** Every child has the right to be represented by an attorney at a detention hearing. An attorney shall be appointed for any child appearing at a detention hearing who cannot afford to hire an attorney. If the child waives representation, standby counsel shall be appointed.

**Subd. 7. Child Incompetent to Proceed.** Every child shall be represented by an attorney in any proceeding to determine whether the child is competent to proceed. An attorney shall be appointed for any child in such proceeding who cannot afford to hire an attorney.

**Subd. 8. Appearance before a Grand Jury.** A child appearing before a grand jury as a witness in a matter which is under the jurisdiction of the Juvenile Court shall be represented by an attorney at public expense if the child cannot afford to retain private counsel. If the child has effectively waived immunity from self-incrimination or has been granted use immunity, the attorney for the child shall be present while the witness is testifying. The attorney shall not be permitted to participate in the grand jury proceedings except to advise and consult with the child witness while the child is testifying.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective July 1, 2015.)

### 3.03 Dual Representation

A child is entitled to the effective representation of counsel. When two or more children are jointly charged or will be tried jointly pursuant to Rule 13.07, and two or more of them are represented by the same counsel, the following procedure shall be followed:

(A) The court shall address each child individually on the record. The court shall advise the child of the potential danger of dual representation and give the child the opportunity to ask the court questions about the nature and consequences of dual representation. The child shall be given the opportunity to consult with outside counsel.

(B) On the record, the court shall ask each child whether the child

- (1) understands the right to be effectively represented by a lawyer;
- (2) understands the details of the lawyer's possible conflict of interest;
- (3) understands the possible dangers in being represented by a lawyer with these possible conflicts;
- (4) discussed the issue of dual representation with a separate lawyer; and
- (5) wants a separate lawyer or waives their Sixth Amendment protections.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

### 3.04 Waiver of Right to Counsel

**Subdivision 1. Conditions of Waiver.** The following provision does not apply to Juvenile Petty or Traffic Offenses, which are governed by Rule 17. Any waiver of counsel must be made knowingly, intelligently, and voluntarily. Any waiver shall be in writing or on the record. The child must be fully and effectively informed of the child's right to counsel and the disadvantages of self-representation by an in-person consultation with an attorney, and counsel shall appear with the child in court and inform the court that such consultation has occurred. In determining whether a child has knowingly, voluntarily, and intelligently waived the right to counsel, the court shall look

to the totality of the circumstances including, but not limited to: the child's age, maturity, intelligence, education, experience, ability to comprehend, and the presence of the child's parents, legal guardian, legal custodian or guardian ad litem appointed in the delinquency proceeding. The court shall inquire to determine if the child has met privately with the attorney, and if the child understands the charges and proceedings, including the possible disposition, any collateral consequences, and any additional facts essential to a broad understanding of the case.

**Subd. 2. Competency Proceedings.** Any child subject to competency proceedings pursuant to Rule 20 shall not be permitted to waive counsel.

**Subd. 3. Court Approval/Disapproval.** If the court accepts the child's waiver, it shall state on the record the findings and conclusions that form the basis for its decision and shall appoint standby counsel as required by Rule 3.02.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective July 1, 2015.)

### **3.05 Renewal of Advisory**

After a child waives the right to counsel, the child shall be advised of the right to counsel by the court on the record at the beginning of each hearing at which the child is not represented by counsel.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

### **3.06 Eligibility for Court Appointed Counsel at Public Expense**

**Subdivision 1. When Parent or Child Cannot Afford to Retain Counsel.** A child and his parent(s) are financially unable to obtain counsel if the child is unable to obtain adequate representation without substantial hardship for the child or the child's family. The court shall inquire to determine the financial eligibility of a child for the appointment of counsel. The ability to pay part of the cost of adequate representation shall not preclude the appointment of counsel for the child.

**Subd. 2. When Parent Can Afford to Retain Counsel.** If the parent(s) of a child can afford to retain counsel in whole or in part and have not retained counsel for the child, and the child cannot afford to retain counsel, the child is entitled to representation by counsel appointed by the court at public expense. After giving the parent(s) a reasonable opportunity to be heard, the court may order that service of counsel shall be at the parent(s)'s expense in whole or in part depending upon their ability to pay.

### **3.07 Right of Parent(s), Legal Guardian(s), Legal Custodian(s) and Guardian Ad Litem to Counsel**

**Subdivision 1. Right of Parent(s), Legal Guardian(s) or Legal Custodian(s).** The parent(s), legal guardian(s) or legal custodian(s) of a child who is the subject of a delinquency proceeding have the right to assistance of counsel after the court has found that the allegations of the charging document have been proved. The court has discretion to appoint an attorney to represent the parent(s), legal guardian(s) or legal custodian(s) at public expense if they are financially unable to obtain counsel in any other case in which the court finds such appointment is desirable.

**Subd. 2. Right of Guardian Ad Litem to Counsel.** In the event of a conflict between the child and the guardian ad litem, the court may appoint separate counsel to represent the guardian ad litem appointed in the delinquency proceeding.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005.)

### 3.08 Certificates of Representation

A lawyer representing a client in juvenile court, other than a public defender, shall file with the court administrator a certificate of representation prior to appearing.

Once a lawyer has filed a certificate of representation, that lawyer cannot withdraw from the case until all proceedings have been completed, except upon written order of the court pursuant to a written motion, or upon written substitution of counsel approved by the court ex parte.

A lawyer who wishes to withdraw from a case must file a written motion and serve it on the prosecuting attorney, and on the client by mail or personal service; and the lawyer shall have the matter heard by the court. No motion of withdrawal will be heard within 10 days of a date certain for hearing or trial.

If the court approves the withdrawal, it shall be effective when the order has been served on the prosecuting attorney, and on the client by mail or personal service, and due proof of such service has been filed with the court administrator.

(Added December 12, 1997, for all juvenile actions commenced or arrests made on or after 12 o'clock midnight January 1, 1998; amended effective December 1, 2012; amended effective July 1, 2015.)

#### *Comment--Rule 3*

*Minn. R. Juv. Del. P. 3 prescribes the general requirements for appointment of counsel for a juvenile. In re Gault, 387 U.S. 1 (1967); Minnesota Statutes 2002, section 260B.163, subdivision 4. The right to counsel at public expense does not necessarily include the right to representation by a public defender. The right to representation by a public defender is governed by Minnesota Statutes, chapter 611.*

*Minn. R. Juv. Del. P. 3.01 provides that the right to counsel attaches no later than the child's first appearance in juvenile court. See Minnesota Statutes 2002, section 611.262. Whether counsel is appointed by the court or retained by the child or the child's parents, the attorney must act solely as counsel for the child. American Bar Association, Juvenile Justice Standards Relating to Counsel for Private Parties (1980). While it is certainly appropriate for an attorney representing a child to consult with the parents whose custodial interest in the child potentially may be affected by court intervention, it is essential that counsel conduct an initial interview with the child privately and outside of the presence of the parents. Following the initial private consultation, if the child affirmatively wants his or her parent(s) to be present, they may be present. The attorney may then consult with such other persons as the attorney deems necessary or appropriate. However, the child retains a right to consult privately with the attorney at any time, and either the child or the attorney may excuse the parents in order to speak privately and confidentially.*

*Minn. R. Juv. Del. P. 3.02 provides for the appointment of counsel for juveniles in delinquency proceedings. A parent may not represent a child unless he or she is an attorney. In Gideon v.*

*Wainwright*, 372 U.S. 335 (1963), the U.S. Supreme Court held that the Sixth Amendment's guarantee of counsel applied to state felony criminal proceedings. In *In re Gault*, 387 U.S. 1 (1967), the Supreme Court extended to juveniles the constitutional right to counsel in state delinquency proceedings. Minnesota Statutes 2002, section 260B.163, subdivision 4, expands the right to counsel and requires that an attorney shall be appointed in any delinquency proceeding in which a child is charged with a felony or gross misdemeanor.

If a child in a felony or gross misdemeanor case exercises the right to proceed without counsel, *Faretta v. California*, 422 U.S. 806 (1975), *State v. Richards*, 456 N.W.2d 260 (Minn. 1990), then Minn. R. Juv. Del. P. 3.02 subd 1 requires the court to appoint standby counsel to assist and consult with the child at all stages of the proceedings. See, e.g., *McKaskle v. Wiggins*, 465 U.S. 168 (1984); *State v. Jones*, 266 N.W.2d 706 (Minn. 1978); *Burt v. State*, 256 N.W.2d 633 (Minn. 1977); *State v. Graff*, 510 N.W.2d 212 (Minn. Ct. App. 1993) *pet. for rev. denied* (Minn. Feb. 24, 1994); *State v. Savior*, 480 N.W.2d 693 (Minn. Ct. App. 1992); *State v. Parson*, 457 N.W.2d 261 (Minn. Ct. App. 1990) *pet. for rev. denied* (Minn. July 31, 1990); *State v. Lande*, 376 N.W.2d 483 (Minn. Ct. App. 1985) *pet. for rev. denied* (Minn. Jan. 17, 1986).

In *McKaskle v. Wiggins*, the Supreme Court concluded that appointment of standby counsel was consistent with a defendant's *Faretta* right to proceed pro se, so long as standby counsel did not stifle the defendant's ability to preserve actual control over the case and to maintain the appearance of pro se representation. The child must have an opportunity to consult with standby counsel during every stage of the proceedings. *State v. Richards*, 495 N.W.2d 187 (Minn. 1992). In order to vindicate this right, counsel must be physically present. "[I]t would be virtually impossible for a standby counsel to provide assistance, much less effective assistance, to a criminal client when that counsel has not been physically present during the taking of the testimony and all of the court proceedings that preceded the request ... [O]nce the trial court ... appoint[s] standby counsel, that standby counsel must be physically present in the courtroom from the time of appointment through all proceedings until the proceedings conclude." *Parson*, 457 N.W.2d at 263. Where the child proceeds pro se, it is the preferred practice for counsel to remain at the back of the courtroom and be available for consultation. *Savior*, 480 N.W.2d at 694-95; *Parson*, 457 N.W.2d at 263; *Lande*, 376 N.W.2d at 485. Moreover, standby counsel must be present at all bench and chambers conferences, even where the child is excluded. *State v. Richards*, 495 N.W.2d 187, 196 (Minn. 1992).

Minn. R. Juv. Del. P. 3.02 subd 2 requires a court to appoint counsel for a child charged with a misdemeanor in a delinquency proceeding unless that child affirmatively waives counsel as provided in Minn. R. Juv. Del. P. 3.04. Minn. R. Juv. Del. P. 3.02 subd 3 requires the appointment of counsel or standby counsel in any proceeding in which out-of-home placement is proposed, and further limits those cases in which a child may waive the assistance of counsel without the appointment of standby counsel. In *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972), the Court held that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor or felony unless he was represented by counsel." In *Scott v. Illinois*, 440 U.S. 367 (1979), the Court clarified any ambiguity when it held that in misdemeanor proceedings, the sentence the trial judge actually imposed, i.e. whether incarceration was ordered, rather than the one authorized by the statute, determined whether counsel must be appointed for the indigent.

In *State v. Borst*, 278 Minn. 388, 154 N.W.2d 888 (1967), the Minnesota Supreme Court, using its inherent supervisory powers, anticipated the United States Supreme Court's *Argersinger* and *Scott* decisions, and shortly after *Gideon*, required the appointment of counsel even in misdemeanor cases "which may lead to incarceration in a penal institution." *Id.* at 397, 154 N.W.2d at 894. *Accord City of St. Paul v. Whidby*, 295 Minn. 129, 203 N.W.2d 823 (1972); *State v. Collins*, 278

*Minn. 437, 154 N.W.2d 688 (1967); State v. Illingworth, 278 Minn. 484, 154 N.W.2d 687 (1967) (ordinance violation). The Borst Court relied, in part, upon Gault's ruling on the need for counsel in delinquency cases to expand the scope of the right to counsel for adult defendants in any misdemeanor or ordinance prosecutions that could result in confinement. 278 Minn. at 392-93, 154 N.W.2d at 891. Like the Court in Gault, Borst recognized the adversarial reality of even "minor" prosecutions.*

*At the very least, Minn. R. Juv. Del. P. 3.02 subd 3 places the prosecution and court on notice that out-of-home placement may not occur unless counsel or standby counsel is appointed. For example, a child appearing on a third alcohol offense faces a dispositional possibility of out-of-home placement, but cannot be placed out of the home if the child is not represented by counsel unless the child is given the opportunity to withdraw the plea or obtain a new trial. See Minn. R. Juv. Del. P. 17.02. The prosecutor should indicate, either on the petition or through a statement on the record, whether out-of-home placement will be proposed. Obviously, basing the initial decision to appoint counsel on the eventual sentence poses severe practical and administrative problems. It may be very difficult for a judge to anticipate what the eventual sentence likely would be without prejudging the child or prejudicing the right to a fair and impartial trial. Minn. R. Juv. Del. P. 3.02 subd 3 also provides that a child retains an absolute right to withdraw any plea obtained without the assistance of counsel or to obtain a new trial if adjudicated without the assistance of counsel, if that adjudication provides the underlying predicate for an out-of-home placement. See, e.g., In re D.S.S., 506 N.W.2d 650, 655 (Minn. Ct. App. 1993) ("The cumulative history of uncounseled admissions resulting after an inadequate advisory of the right to counsel constitutes a manifest injustice"). Appointing counsel solely at disposition is inadequate to assure the validity of the underlying offenses on which such placement is based. Of course, routine appointment of counsel in all cases would readily avoid any such dilemma.*

*Minnesota Statutes, section 260B.007, subdivision 16, defines "juvenile petty offenses," and includes most offenses that would be misdemeanors if committed by an adult. Minn. R. Juv. Del. P. 3.02 subd 5 and 17.02 explain when a juvenile petty offender is entitled to court-appointed counsel. If a child is charged as a juvenile petty offender, the child or the child's parents may retain and be represented by private counsel, but the child does not have a right to the appointment of a public defender or other counsel at public expense. The denial of access to court-appointed counsel is based on the limited dispositions that the juvenile court may impose on juvenile petty offenders. Minnesota Statutes 2002, section 260B.235, subdivision 4. However, children who are charged with a third or subsequent juvenile alcohol or controlled substance offense are subject to out-of-home placement and therefore have a right to court-appointed counsel, despite their status as juvenile petty offenders. If the court is authorized to impose a disposition that includes out-of-home placement, then the provisions of Minn. R. Juv. Del. P. 3.02 subd 5 and 17.02 are applicable and provide the child a right to counsel at public expense.*

*Minn. R. Juv. Del. P. 3.02 subd 6 is an exception to the prohibition of appointment of counsel at public expense for a juvenile traffic or juvenile petty offender. If such a child is detained, at any hearing to determine if continued detention is necessary, the child is entitled to court-appointed counsel if unrepresented because substantial liberty rights are at issue.*

*Minn. R. Juv. Del. P. 3.02 subd 7 is an exception to the prohibition of appointment of counsel at public expense for a juvenile traffic or juvenile petty offender. As soon as any child is alleged to be incompetent to proceed, that child has a right to be represented by an attorney at public expense for the proceeding to determine whether the child is competent to proceed. Substantial liberty rights are at issue in a competency proceeding. A finding of incompetency is a basis for a Child in Need of Protection or Services adjudication and possible out-of-home placement. Minnesota Statutes 2002, sections 260C.007, subdivision 6, clause (15) and 260C.201. See also Minn. R. Juv. Del. P.*

20.01. *Because out-of-home placement is a possibility, the child is entitled to court-appointed counsel.*

*Minn. R. Juv. Del. P. 3.03 regarding advising children of the perils of dual representation is patterned after Minn. R. Crim. P. 17.03 subd 5.*

*Minn. R. Juv. Del. P. 3.04 prescribes the circumstances under which a child charged with an offense may waive counsel. The validity of relinquishing a constitutional right is determined by assessing whether there was a "knowing, intelligent, and voluntary waiver" under the "totality of the circumstances." See, e.g., Fare v. Michael C., 442 U.S. 707 (1979); Johnson v. Zerbst, 304 U.S. 458 (1938) (waiver of counsel); In re M.D.S., 345 N.W.2d 723 (Minn. 1984); State v. Nunn, 297 N.W.2d 752 (Minn. 1980); In re L.R.B., 373 N.W.2d 334 (Minn. Ct. App. 1985). The judicial position that a young minor can "knowingly and intelligently" waive constitutional rights is consistent with the legislature's judgment that a youth can make an informed waiver decision without parental concurrence or consultation with an attorney. Minnesota Statutes 2002, section 260B.163, subdivision 10 ("Waiver of any right ... must be an express waiver intelligently made by the child after the child has been fully and effectively informed of the right being waived").*

*While recognizing a right to waive counsel and proceed pro se, Minn. R. Juv. Del. P. 3.02 requires juvenile courts to appoint standby counsel to assist a child charged with a felony or gross misdemeanor, or where out-of-home placement is proposed, and to provide temporary counsel to consult with a child prior to any waiver in other types of cases. See, e.g., State v. Rubin, 409 N.W.2d 504, 506 (Minn. 1987) ("[A] trial court may not accept a guilty plea to a felony or gross misdemeanor charge made by an unrepresented defendant if the defendant has not consulted with counsel about waiving counsel and pleading guilty"); Jones, 266 N.W.2d 706 (standby counsel available to and did consult with defendant throughout proceedings and participated occasionally on defendant's behalf); Burt, 256 N.W.2d at 635 ("One way for a trial court to help ensure that a defendant's waiver of counsel is knowing and intelligent would be to provide a lawyer to consult with the defendant concerning his proposed waiver").*

*In State v. Rubin, the court described the type of "penetrating and comprehensive examination" that must precede a "knowing and intelligent" waiver and strongly recommended the appointment of counsel "to advise and consult with the defendant as to the waiver." See also ABA Standards of Criminal Justice, Providing Defense Services, sections 5-7.3 (1980); Minn. R. Crim. P. 5.04. Minn. R. Juv. Del. P. 3.04 subd 1 prescribes the type of "penetrating and comprehensive examination" expected prior to finding a valid waiver. Prior to an initial waiver of counsel, a child must consult privately with an attorney who will describe the scope of the right to counsel and the disadvantages of self-representation. Following consultation with counsel, any waiver must be in writing and on the record, and counsel shall appear with the child to assure the court that private consultation and full discussion has occurred.*

*To determine whether a child "knowingly, intelligently, and voluntarily" waived the right to counsel, Minn. R. Juv. Del. P. 3.04 subd 1 requires the court to look at the "totality of the circumstances," which includes but is not limited to the child's age, maturity, intelligence, education, experience, and ability to comprehend and the presence and competence of the child's parent(s), legal guardian or legal custodian. In addition, the court shall decide whether the child understands the nature of the charges and the proceedings, the potential disposition that may be imposed, and that admissions or findings of delinquency may be valid even without the presence of counsel and may result in more severe sentences if the child re-offends and appears again in juvenile court or in criminal court. United States v. Nichols, 511 U.S. 738 (1994); United States v. Johnson, 28 F.3d 151 (D.C. Cir. 1994) (use of prior juvenile convictions to enhance adult sentence). The court shall*

*make findings and conclusions on the record as to why it accepts the child's waiver or appoints standby counsel to assist a juvenile who purports to waive counsel.*

*Even though a child initially may waive counsel, the child continues to have the right to counsel at all further stages of the proceeding. Minn. R. Juv. Del. P. 3.05 requires that at each subsequent court appearance at which a child appears without counsel, the court shall again determine on the record whether or not the child desires to exercise the right to counsel.*

*Minn. R. Juv. Del. P. 3.06 prescribes the standard to be applied by the court in determining whether a child or the child's family is sufficiently indigent to require appointment of counsel. The standards and methods for determining eligibility are the same as those used in Minn. R. Crim. P. 5.04 subds 3-5.*

*Minn. R. Juv. Del. P. 3.06 subd 2 provides that if the parent(s) of a child can afford to retain counsel but have not done so and the child cannot otherwise afford to retain counsel, then the court shall appoint counsel for the child. When parents can afford to retain counsel but do not do so and counsel is appointed for the child at public expense, in the exercise of its sound discretion, the court may order reimbursement for the expenses and attorney's fees expended on behalf of the child. Minnesota Statutes 2002, section 260B.331, subdivision 5 ("[T]he court may inquire into the ability of the parents to pay for such counsel's services and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay attorneys fees"). See, e.g., In re M.S.M., 387 N.W.2d 194, 200 (Minn. Ct. App. 1986).*

*Minn. R. Juv. Del. P. 3.07 implements the rights of a child's parent(s), legal guardian or legal custodian to participate in hearings affecting the child. After a child has been found to be delinquent and state intervention potentially may intrude upon the parent's custodial interests in the child, the parent(s) have an independent right to the assistance of counsel appointed at public expense if they are eligible for such services.*