

Juvenile Waiver of Counsel

Summary:

- ▶ Thousands of young people charged with crimes waive their right to counsel without understanding the consequences.
- ▶ Without the protection of counsel, young people are more likely to be placed in detention and prison.
- ▶ States can protect the right to counsel by prohibiting waiver of counsel for youths, or alternatively, by mandating that youths consult with an attorney before waiving counsel.
- ▶ In 2004, Louisiana, Maryland and Virginia amended their statutes to protect children's right to counsel.
- ▶ States should meet national professional standards for the protection of children's right to counsel.

Thousands of young people charged with crimes waive their right to counsel without understanding the consequences.

Across America, children who are not old enough to vote, drink, buy cigarettes, or, in most cases, sign a binding contract, nevertheless may routinely waive their constitutional right to counsel. In some jurisdictions, more than half of youths in court appear without any representation.¹ Juveniles obviously lack the knowledge and decision-making capabilities of adults; they simply do not have the legal knowledge to understand the consequences of waiving their constitutional right to counsel. One study showed that nearly 80 percent of juveniles do not fully understand the concepts entailed within the Miranda rights, particularly the right to consult with an attorney.²

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A national study observed that juveniles who lack legal assistance tend to enter admissions of guilt without offering any defense or mitigating evidence.³ Judges are more likely, therefore, to regard these youths as in need of detention or incarceration.⁴ Studies show that youths placed in detention and corrections are more vulnerable to assault, suicide and sexual abuse, and are more likely to commit further crimes after their release.⁵

States can protect the right to counsel by prohibiting waiver of counsel for youths, or alternatively, by mandating that youths consult with an attorney before waiving counsel.

The Institute of Judicial Administration and American Bar Association Juvenile Justice Standards hold that "A juvenile's right to counsel may not be waived."⁶ Iowa follows this rule; it does not allow youths of any age to waive counsel at any delinquency-related court proceeding.⁷ Eight other states (KS, MA, MT, NJ, NM, NC, OK, WV) also prohibit juveniles from waiving their right to counsel, although states apply this rule differently depending on youths' ages. Fourteen other states (CO, CT, IN, KS, LA, MA, MD, MT, NJ, NC, OK, VT, VA, WY) offer weaker protection of juveniles' right to counsel by creating specific requirements for waiver.⁸ New Jersey's statute, for example, does not allow a child to waive counsel if s/he does not do so "in the presence of, and after consultation with counsel."⁹

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Though these states did not eliminate waiver of counsel by juveniles altogether, they each created significant protection for the right to counsel, with bills that passed with overwhelming bipartisan support in both legislative houses.

JUVENILE WAIVER OF COUNSEL POLICY SUMMARY

States should meet national professional standards for the protection of children's right to counsel.

The Child Waiver of Counsel Prohibition Act complies with the Institute for Judicial Administration and American Bar Association Juvenile Justice Standards by prohibiting waiver of counsel by juveniles. The Fairness for Accused Children Act only satisfies the requirements of ABA policy regarding youths in the adult criminal system.¹⁰ This Act:

- ▷ Prevents juveniles from waiving counsel without prior consultation with an appointed counsel.
- ▷ Requires that if the right to counsel is waived, a full inquiry be made by the court into the youth's comprehension of that right and his or her capacity to make the choice knowingly and intelligently.
- ▷ Mandates that all waivers be submitted in writing and in open court.
- ▷ Mandates that the offer of counsel be renewed at each later stage of court proceedings at which the youth appears without counsel.
- ▷ Requires that if the right to counsel is waived, stand-by counsel be appointed.

Endnotes

- 1 American Bar Association Juvenile Justice Center, "Maryland: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings," 2003.
- 2 Thomas Grisso and Carolyn Pomicter, "Interrogation of Juveniles: An Empirical Study of Procedures, Safeguards, and Rights Waiver," 1 *Law and Human Behavior* 321, 1977.
- 3 American Bar Association Juvenile Justice Center, "A Call for Justice," 1995.
- 4 Texas Appleseed, "Selling Justice Short: Juvenile Indigent Defense in Texas," 2000.
- 5 Coalition for Juvenile Justice, "Unlocking the Future: Detention Reform in the Juvenile Justice System," 2003.
- 6 Institute for Judicial Administration/American Bar Association, "Juvenile Justice Standards Relating to Pretrial Court Proceedings," Standard 6.1, 1979.
- 7 "The child's right to be represented by counsel [at a detention, waiver, adjudicatory, dispositional, or post-dispositional hearing] shall not be waived by a child of any age," Iowa Code Ann. § 232.11.
- 8 Linda Szymanski, "Waiver of Miranda Rights," NCJJ Snapshot 7, National Center for Juvenile Justice, 2002.
- 9 N.J. Stat. Ann. § 2A:4A-39.
- 10 American Bar Association Criminal Justice Section Standards, "Youth in the Criminal Justice System: Guidelines for Policymakers and Practitioners," 2001.