

HB 2718 Protects Youths, Ensures Accurate Proceedings, and Helps Prevent Wrongful Convictions

- By requiring youths to speak with a lawyer before youths may waive their constitutional rights.

What are Miranda Rights?¹

- The 1966 US Supreme Court case of *Miranda v. Arizona* establishes that whenever a person is taken into police custody, they cannot be questioned until they have been advised of their Fifth Amendment right not to self-incriminate.
- The Miranda Rights are: the right to remain silent, advice that anything one says can and will be used against one in a court of law, the right to have an attorney, and if one is unable to afford an attorney, the right to have an attorney appointed at no cost—these rights are inconsistently phrased many ways with many different words.
- The same warnings given to youths are the same warnings given to adults—research suggests that at least a 10th grade reading level is required for comprehension.²
- Over 90 % of youths waive these rights when speaking to police³

Youths are Fundamentally Different

- Youths are not like adults when it comes to understanding and invoking their rights.⁴
- Youths' age and intelligence are the primary factors when it comes to understanding their rights.⁵
- Youths are “physiologically incapable” of thinking like adults.⁶
- “Capacity to reason is based on “brain development and growth” more than “intellectual development.”⁷
- “The frontal cortex of the brain, which is used in making informed decisions, is the last part of the brain to develop and therefore is of decreased ability in juveniles.”⁸
- “The adolescent’s sense of time, lack of future orientation, labile emotions, calculus of risk and gain, and vulnerability to pressure will often drive him or her to make very different decisions than an adult would in similar circumstances.”⁹
- The difference becomes more apparent in situations of stress, such as police interrogations or court proceedings.¹⁰

Youths and Procedural Fairness are Protected when Youths have Attorneys

- Please watch TED Talk given by Kim Dvorchak, former Executive Director of the National Juvenile Defender Center on “Why Juveniles Need Good Lawyers”: (<https://www.youtube.com/watch?v=OfL5JmZnkI8>)¹¹
- Although entitled to legal representation, many juveniles do not have legal representation when interrogated.¹²
- “Juveniles cannot in many circumstances give a truly valid waiver. It is nearly impossible for psychiatric experts, much less police officers or judges, to distinguish valid waivers by juveniles from invalid ones.”¹³

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¹ *Miranda v. Arizona*, 384 U.S. 436 (1966) (<http://caselaw.findlaw.com/us-supreme-court/384/436.html>)

² Richard Rogers, Lisa L. Hazelwood, Kenneth W. Sewell, Daniel W. Shuman, Hayley L. Blackwood “The Comprehensibility and Content of Juvenile Miranda Warnings,” 14 Psychol. Pub. Pol’y & L. 63 (2008) at

³ Benjamin E. Friedman, “Protecting Truth: An Argument for Juvenile Rights and a Return to *In Re Gault*,” 58 UCLA Law Review Discourse 165 (2011), citing Steven A. Drizin & Greg Luloff, “Are Juvenile Courts a Breeding Ground for Wrongful Convictions?,” 34 N. KY. L. REV. 257, 263 (2007) at 266.

(<http://www.uclalawreview.org/pdf/discourse/58-9.pdf>) (“Miranda . . . is little more than a speed-bump for police officers when questioning adults and even less of an obstacle when interrogating juveniles.”).

⁴ *Id.* at 176 citing Barry C. Feld, “Juveniles’ Competence to Exercise Miranda Rights: An Empirical Study of Policy and Practice,” 91 MINN. L. REV. 26, 31 (2006) at 78.

⁵ *Id.* at 176 citing Steven A. Drizin & Greg Luloff, “Are Juvenile Courts a Breeding Ground for Wrongful Convictions?,” 34 N. KY. L. REV. 257, 263 (2007) at 269.

⁶ *Id.* at 182 citing Kenneth J. King, “Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children From Unknowing, Unintelligent, and Involuntary Waivers of Miranda Rights,” 2006 WIS. L. REV. at 440.

⁷ King, *supra* note 5, at 436

⁸ *Id.* at 440 (“It is the frontal cortex that gathers input from the various regions of the brain, sorts it out, decides what is important and what is not, and tells the person how to react or what to say. This part of the brain, unarguably critical to making informed decisions with respect to legal rights, is the part of the brain that develops last.”)

⁹ *Id.* at 436.

¹⁰ *Id.*

¹¹ TED Talk by Kim Dvorchak, former Executive Director of the National Juvenile Defender Center on “Why Juveniles Need Good Lawyers”:

(<https://www.youtube.com/watch?v=OfL5JmZnkI8>)

¹² Feld, *supra* note 3, at 89–90

¹³ King, *supra* note 5, at 477–78