



Legislative Testimony

Oregon Criminal Defense Lawyers Association

May 2, 2017

The Honorable Floyd Prozanski, Chair
Senate Judiciary Committee, Members

Re: Testimony in Support of HB 2616

Dear Chair Prozanski and Members of the Committee:

The Oregon Criminal Defense Lawyers Association is an association of attorneys who represent juveniles and adults in delinquency, dependency, criminal prosecutions, appeals, civil commitment and post-conviction relief proceedings throughout the state of Oregon. Thank you for the opportunity to submit the following comments in support of HB 2616-A.

In May of this year, 50 years will have passed since the US Supreme Court decided *In Re Gault*¹. This landmark decision established that juveniles have a constitutional right to counsel. In commemoration of this landmark decision, OCDLA and their Juvenile Law Legislative Committee bring HB 2616 to the 79th Legislative Assembly for consideration.

Data compiled by the Office of Public Defense Services show that youths throughout Oregon are waiving their right to an attorney in both felony and misdemeanor cases not infrequently.² Recent advances in developmental psychology and neuroscience shows that youths decision making capabilities are impacted by their brains' immaturity.³ Navigating the juvenile justice system is just as complex as the adult justice system, and it has the same far-reaching consequences, and yet youths do not possess the same cognitive tools as adults. While adults often have the capacity to consider complex options, weigh priorities, and understand and anticipate long-term consequences, youths do not process information similarly to adults.

With this in mind, OCDLA is proposing HB 2616-A as a way to safeguard youths' constitutional right to counsel by making sure they are not waiving their rights to counsel without having a meaningful consultation with a lawyer about their case and their right to be represented. Our goal with HB 2616-A is to fill a hole in the juvenile law landscape in Oregon by bringing it in line with best practices exercised in other states.

¹ *In re Gault*, 387 U.S. 1, 27 (1967).

² In 2015, 103 Oregon youths waived their right to counsel.

³ Juvenile Law Reader, Youth, Rights & Justice, Volume 13, Issue 4 | Winter 2016, What We Now Know About The Adolescent Brain, Anne-Marie Smith, Ph.D.

HB 2616-A does the following:

For court-involved proceedings—youths eleven years old and younger may not waive their right to counsel. For youths twelve years and older, the court may accept a waiver of counsel only if the child has been appointed counsel for purposes of consultation with counsel about the case and waiver; the waiver is in writing and open court; and the court engages in a colloquy to determine that the waiver is knowing, intelligent and voluntary;

For formal accountability agreements—waiver of counsel may occur for these diversions, but only in writing after notice of right to counsel is provided to the youth and their parents/guardians.

The final language in HB 2616-A passed by the House Judiciary Committee was developed in collaboration with Juvenile Department Director's Association, Oregon Judicial Department, Oregon Criminal Defense Lawyers Association, Office of Public Defense Services, and Youth, Rights and Justice.

The 50th Anniversary of *In Re Gault* is the perfect time for the legislature to safeguard youths' constitutional right to counsel by preventing waiver of counsel without a meaningful consultation with counsel.

We urge your "yes" vote. Thank you for your consideration.

For questions or comments contact Mary A. Sell, OSB # 111401
Legislative Representative
Oregon Criminal Defense Lawyers Association
503-516-1376 * msell@ocdla.org