



HB 2616 Dash-A
Juvenile Right to Counsel/Waiver of Counsel
Third Reading: Wednesday April 5, 2017

Celebrating *In Re Gault* and Ensuring that Youths in Oregon Exercise their Right to Counsel:

- In May of this year, 50 years will have passed since the US Supreme Court decided *In Re Gault*¹.
- This hallmark 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 in order to address the problem that some youths are waiving their right to counsel in order to plead guilty to a charge without ever consulting an attorney.

The Problem to Address:

- OPDS has engaged in significant research over the past few years. This research shows that in 2015, 103 youths waived their right to counsel.
- While this is a small number, this is still a significant problem to address because:
 - unlike adults, when youths waive their right to counsel, they are not choosing to represent themselves at trial, they are choosing to plead guilty;
 - the choice points of consulting an attorney and taking a deal are often conflated—these choice points are rarely conflated for adults and should not be connected for youths; and
 - science supports the concept that youths are fundamentally different—their brains are not fully developed until their early 20's—this physiological difference means that youths are impulsive, focused on short-term gains, and struggle to make difficult decisions in stressful circumstances.

What Does HB 2616 do?

HB 2616 recognizes that youths should have a meaningful consultation with an attorney who has their best interests in mind and can provide a calm space for the youth to make a decision that will have far-reaching consequences.

- *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 youth 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 conversation with the youth in open court to determine that the youth's waiver is knowingly, intelligently and voluntarily made;
- *For Youths Offered Diversion (also known as formal accountability agreements):*
 - Waiver of counsel may occur for these, but only in writing after notice of right to counsel is provided to the youth and their parents/guardians.

Important Stakeholders Have Had a Say:

- Stakeholders including Oregon Public Defense Services (OPDS), Youths, Rights and Justice (YRJ), The Oregon Judicial Department (OJD), and Oregon Juvenile Department Directors Association (OJDDA) participated in multiple workgroups after the Public Hearing where their concerns were acknowledged, addressed, and the discussed changes were incorporated into the Dash-A.
- Youth, Rights and Justice (YRJ) supports HB 2616 Dash-A.
- Oregon Judicial Department (OJD) is neutral but supports the language changes made in the Dash-A.
- ODAA is neutral.

Youths and Procedural Fairness are Protected when Youths have Attorneys:

- For an informational presentation on “Why Juveniles Need Good Lawyers,” please watch a TED Talk given by Kim Dvorchak, former Executive Director of the National Juvenile Defender Center. (<https://www.youtube.com/watch?v=OfL5JmZnkI8>)²

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¹ In re Gault, 387 U.S. 1, 27 (1967).

² 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>)