
**Juvenile Justice & Family Law
Committee**

HB 2343

Brief Description: Modifying juvenile waiver of rights.

Sponsors: Representative Moeller.

Brief Summary of Bill

- Requires law enforcement to make reasonable attempts to notify a child's parent, guardian, or custodian when the child is taken into custody and is being held.
- Requires law enforcement to permit a parent to immediately consult with his or her child upon the parent's request, unless the child objects or if the parent is a codefendant or victim.
- Requires law enforcement to advise a juvenile who is in custody of his or her rights including the right to counsel, to remain silent, and to consult with a parent, guardian or custodian.
- Prohibits a juvenile from waiving his or her right to counsel unless the juvenile consults with counsel and the waiver is knowing and voluntary.

Hearing Date: 1/11/06.

Staff: Sonja Hallum (786-7092).

Background:

Juveniles who are accused of criminal activity are provided essentially the same constitutional guarantees and procedural safeguards as adult defendants. Two such rights guaranteed to juveniles are the privilege against self-incrimination and the right to counsel.

Privilege against self-incrimination

Prior to questioning a juvenile who is in custody, law enforcement is required to notify the juvenile of his or her right to remain silent, that anything the juvenile says may be used against him or her, and that he or she has the right to counsel. This is the same notification that must be provided to adults and is commonly referred to as the "Miranda" warnings, based on the name of a United States Supreme Court case that recognized the right to the notification.

A juvenile may choose to waive his or her right to self-incrimination. A court will review decisions to waive the privilege against self-incrimination to determine whether the waiver was

knowing and voluntary. The court will look to the circumstances surrounding the waiver and determine if the juvenile understood the rights he or she waived and whether the waiver was voluntary, and not coerced.

Right to Counsel

The juvenile court may appoint an attorney to represent a juvenile charged with a criminal offense, without cost to the juvenile. A juvenile may waive his or her right to an attorney. The current Washington statutes do not set out requirements for waiver of counsel.

If a juvenile chooses to waive his or her right to counsel a court will review the waiver of counsel to determine whether the waiver was knowing and voluntary. The court will look to the circumstances surrounding the waiver and determine if the waiver was appropriate under the circumstances.

Summary of Bill:

The bill makes changes to rights guaranteed to juveniles who are being investigated for, or charged with, criminal activity including the privilege against self-incrimination and the right to counsel. The bill also establishes a juvenile "Miranda" warning.

Parental Notification

Law enforcement is required to make reasonable attempts to notify a child's parent, guardian, or custodian when the child is taken into custody and is being held.

When a parent, guardian or custodian requests to consult with the child, and makes himself or herself immediately available, law enforcement must permit the parent to immediately consult with his or her child, unless the child objects or if the parent is a codefendant or victim of the juvenile.

Juvenile Miranda Warning

A juvenile "Miranda" warning is created that is a variation of the adult "Miranda" warning. The juvenile "Miranda" warning requires law enforcement to advise a juvenile who is in custody of the juvenile's rights. The standard "Miranda" warning is expanded. In addition to advising a juvenile that he or she has the right to remain silent, that anything the juvenile says may be used against him or her, the right to counsel, and the right to have counsel appointed if the juvenile cannot afford to hire an attorney, law enforcement must advise the juvenile that he or she has the right to consult with a parent, guardian or custodian.

Right to Counsel

The ability of a juvenile to waive his or her right to counsel is restricted. A parent is prohibited from waiving the child's right to the assistance of counsel.

A juvenile may only waive his or her right to counsel if the court finds that the juvenile has first consulted with an attorney and that the waiver is knowing and voluntary. When making his or her determination, the judge should consider the juvenile's school performance and any testing conducted by the school.

The court may only determine that the waiver was knowing and voluntary if the court questions the juvenile on the record during a court hearing about the decision to waive the right to counsel and the court finds that the juvenile fully comprehends the following:

1. The nature of the allegations and the proceedings, and the range of allowable dispositions;
2. That counsel would be of valuable assistance in determining and presenting any defenses to the allegations in the petition or charge, or other mitigating circumstances;
3. That the right to the assistance of counsel includes the right to the prompt assignment of an attorney, without charge to the child or the child's parents if they are financially unable to obtain private counsel;
4. That even if the child intends not to contest the petition or charge, counsel may be of substantial assistance in developing and presenting material that could favorably affect the disposition; and
5. That among the child's rights at any hearing are the right to call witnesses on the child's behalf, the right to confront and cross-examine witnesses, the right to obtain witnesses by compulsory process, and the right to require proof of the elements of the charge or status offense.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.