

FINAL BILL REPORT

ESHB 1140

C 328 L 21
Synopsis as Enacted

Brief Description: Concerning juvenile access to attorneys when contacted by law enforcement.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Johnson, J., Frame, Entenman, Sells, Taylor, Santos, Stonier, Ormsby, Lekanoff, Davis, Hackney, Macri, Callan, Chopp, Pollet, Ryu, Goodman, Berg, Ramos, Bergquist, Gregerson, Wicks, Peterson, Thai, Dolan, Bateman, Simmons, Fitzgibbon and Valdez).

House Committee on Civil Rights & Judiciary
House Committee on Appropriations
Senate Committee on Human Services, Reentry & Rehabilitation
Senate Committee on Ways & Means

Background:

Constitutional Rights.

Individuals, whether they are adults or juveniles, are generally protected by a series of constitutional rights when they interact with law enforcement officers.

The Right to Remain Silent.

The Fifth Amendment to the United States Constitution provides that no person shall be compelled in any criminal case to be a witness against themselves. To counteract the inherent compulsion of custodial interrogation, the Supreme Court's *Miranda* decision and subsequent case law requires that the defendant be warned prior to any questioning that they have the right to remain silent, that anything they say can be used against them in a court of law, that they have the right to the presence of an attorney, and that if they cannot afford an attorney one will be appointed for them prior to any questioning if they so desire. Once a suspect invokes their right to remain silent, police may not continue the interrogation or make repeated efforts to wear down the suspect.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

The Right to Counsel.

The Right to Counsel in a Custodial Interrogation: When an individual is taken into custody and subjected to questioning, the privilege against self-incrimination is implicated. Procedural safeguards are employed to protect the privilege. The individual must be warned they have a right to the presence of an attorney, and an opportunity to exercise this right must be afforded throughout the interrogation.

The Right to Counsel in Adversarial Proceedings: A criminal defendant is entitled to the assistance of counsel at critical stages of litigation. A critical stage is one in which a defendant's rights may be lost, defenses waived, privileges claimed or waived, or in which the outcome of the case is otherwise substantially affected.

The Right to Appointment of Counsel: Individuals subject to custodial interrogation or criminal prosecution who are unable to afford counsel have a constitutional right to have counsel appointed for them at public expense.

Waiver of Constitutional Rights.

An individual can waive their rights, e.g., by agreeing to speak with law enforcement instead of standing on their right to remain silent.

A waiver of a constitutional right is valid only if it is voluntary, knowing, and intelligent. A waiver is voluntary if it is the product of a free and deliberate choice rather than intimidation, coercion, or deception. A waiver is knowing and intelligent if it is made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Courts consider the totality of the circumstances in evaluating whether these requirements are met.

Washington Court Rules.

The Washington Superior Court Criminal Rules extend the right to counsel beyond the constitutional minimums. The rules provide that the right to a lawyer extends to all criminal proceedings for offenses punishable by loss of liberty. The right to a lawyer accrues as soon as feasible after the defendant is taken into custody, appears before a committing magistrate, or is formally charged, whichever occurs earliest. The court rules provide that, unless the right is waived, a lawyer must be provided to any person who is financially unable to obtain one without causing substantial hardship.

Rights of Juveniles.

Courts may consider an individual's maturity, intelligence, education, and experience when evaluating whether a waiver of a constitutional right was voluntary, knowing, and intelligent. In Washington, the rights of a juvenile under 12 years old may only be waived by a parent, guardian, or custodian. A juvenile at least 12 years old may waive their own rights.

Summary:

Juvenile Access to An Attorney.

Law enforcement must provide a juvenile with access to an attorney, in person or by phone or video, before the juvenile waives any constitutional rights if a law enforcement officer:

1. questions a juvenile during a custodial interrogation;
2. detains the juvenile based on probable cause of involvement in criminal activity; or
3. requests the juvenile provide consent to an evidentiary search of the juvenile or the juvenile's property, dwellings, or vehicles under the juvenile's control.

The consultation may not be waived.

Custodial interrogation is defined as express questioning or other actions or words by a law enforcement officer that are reasonably likely to elicit an incriminating response from an individual and occurs when reasonable individuals in the same circumstances would consider themselves in custody.

Statements made by a juvenile after the juvenile is contacted by law enforcement in any of the above scenarios are inadmissible in juvenile or adult court proceedings, unless:

1. the juvenile is provided with access to an attorney for consultation and makes an express, knowing, intelligent, and voluntary waiver after being fully informed of their rights;
2. the statement is for impeachment purposes; or
3. the statement was made spontaneously.

Any assertion of constitutional rights by the juvenile through legal counsel must be treated by a law enforcement officer as though it came from the juvenile.

Exceptions to the Juvenile-Access-to-an-Attorney Requirement.

A law enforcement officer may question a juvenile without providing access to an attorney when:

1. the law enforcement officer believes the juvenile is a victim of trafficking; however, any information obtained from the juvenile by law enforcement pursuant to this subsection cannot be used in any prosecution of that juvenile; or
2. (a) the law enforcement officer believes that the information sought is necessary to protect an individual's life from an imminent threat; (b) a delay to allow legal consultation would impede the protection of an individual's life from an imminent threat; and (c) questioning by the law enforcement officer is limited to matters reasonably expected to obtain information necessary to protect an individual's life from an imminent threat.

Provision of Access to Counsel.

The Director of the Office of Public Defense is required to provide access to attorneys for juveniles consistent with the requirements described above.

Subject to the rules of discovery, the Office of Public Defense is authorized to collect

identifying information for any youth who speaks with a consulting attorney pursuant to this act. Such records are exempt from public disclosure.

Votes on Final Passage:

House	56	41	
Senate	29	19	(Senate amended)
House	56	41	(House concurred)

Effective: January 1, 2022