

JUVENILE MIRANDA RIGHTS

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This article will discuss a juvenile's *Miranda* rights, what constitutes a valid waiver of those rights, and what officers must do to make sure a juvenile's confession will not be suppressed in court.

BACKGROUND

Before the twentieth century, juveniles were treated and sentenced as adults. It was not until the Industrialization Era that society developed the *parens patriae* concept, that the state could intervene to protect a child's welfare.¹ The juvenile court that developed in the 1900's was very different from the adult court by having informal proceedings, proceedings based on civil law, closed proceedings, emphasis on helping the child, and lack of jury trials.²

The juvenile court system remained virtually unchanged until the Supreme Court decision, *In Re Gault* in 1967³ which held that the due process clause of the Fourteenth Amendment applied to juvenile court proceedings. The opinion states that juveniles have 1) a right to notice, 2) a right to counsel, 3) a right to confront witnesses, and 4) a privilege against self-incrimination in hearings that could result in them being confined to an institution.⁴ The juvenile's right to notice includes being advised in a timely manner

of the charges against them and notice to parents when their child has been taken into custody. Juveniles have the right to have an attorney present during all phases of the proceedings. If they cannot afford an attorney, one will be appointed for them.⁵ Juveniles have the right to cross-examine witnesses. Finally, the Court extended the *Miranda* decision to apply to juveniles as well as adults.

REQUIREMENTS

FEDERAL JUVENILE DELINQUENCY
ACT 18 USC § 5033

Custody prior to appearance before
magistrate.

Whenever a juvenile is taken into custody for an alleged act of juvenile delinquency, the arresting officer shall immediately advise such juvenile of his legal rights, in language comprehensive to a juvenile, and shall immediately notify the Attorney General and the juvenile's parents, guardian, or custodian of such custody. The arresting officer shall also notify the parents, guardian, or custodian of the rights of the juvenile and of the nature of the alleged offense.

The juvenile shall be taken before a magistrate forthwith. In no event shall the juvenile be detained for longer than a reasonable period of time before being brought before a magistrate.

¹ David W. Neubauer, *America's Courts and the Criminal Justice System* (6th ed., West/Wadsworth 1998).

² *Id.*

³ *Id.*

⁴ *In Re Gault*, 387 U.S. 1 (1967).

⁵ *Id.* at 41.

In *Fare v. Michael C.*, The Supreme Court ruled that a totality of the circumstances test is adequate to determine a valid waiver of rights during an interrogation of a juvenile.⁶ The court must look to all circumstances surrounding the interrogation. Some factors to consider are the juvenile's age, education, experience, intelligence, background, and whether the juvenile understands the warnings given and the consequences of waiving those rights.⁷ In this case, the juvenile was 16 ½, was currently on probation, had a record of prior offenses, had spent time in a youth corrections camp, was of average intelligence, and there was no coercion used. Therefore, under the totality of the circumstances, the juvenile voluntarily waived his rights and the confession was admitted.

The Ninth Circuit Court of Appeals uses a three-part test for reviewing Juvenile Delinquency Act violations.⁸ First, the Court asks whether the government violated § 5033.⁹ If the answer is yes, the next question is whether the government's conduct was so outrageous that it deprived the juvenile of their due process rights.¹⁰ If the answer to the second question is yes, then the case is reversed.¹¹ Even if the answer is no, the court also has discretion to reverse the case if the defendant was "prejudiced."¹² The Ninth Circuit uses a two-step test to determine prejudice – 1) was the § 5033 violation a cause of the confession (isolation from family, lack of advice from counsel, etc.) and 2) what was the

prejudice caused by the confession.¹³ For example, was the prosecution and conviction based primarily on the confession?

SCOPE

The State must make a good faith effort to locate a juvenile's parents or guardian before beginning questioning.

In the case *U.S. v. Burrous*, the defendant was arrested for armed robbery.¹⁴ One of the arresting agents asked the defendant three different times how his parents or guardian could be contacted and the defendant replied that he did not know how either his mother, father, or brother could be contacted. The defendant did not give the agents enough information to locate his relatives and he did not attempt to contact anyone himself. The defendant voluntarily waived his *Miranda* rights and confessed. The court ruled that law enforcement officers made good faith efforts to locate juvenile's parents and that his confession was admissible.¹⁵

A juvenile's parents or guardian must be advised of the juvenile's rights immediately, according to §5033.

In *U.S. v. John Doe*, the court said that even though the agents attempted to notify the juvenile's parents before they began to question him, it was three and a half hours after he was taken into custody and, therefore, not "immediate" under § 5033.¹⁶

⁶ *Fare v. Michael C.*, 442 U.S. 707 (1979).

⁷ *Id.* at 725.

⁸ *U.S. v. Juvenile (RRA-A)*, 229 F.3d 737 (9th Cir. 2000).

⁹ *Id.* at 744.

¹⁰ *Id.* at 744.

¹¹ *Id.* at 744.

¹² *Id.* at 744.

¹³ *Id.* at 747.

¹⁴ 147 F.3d 111 (2nd Cir. 1998).

¹⁵ *Id.* at 113.

¹⁶ 219 F.3d 1009, 1015 (9th Cir. 2000).

The arresting officer has the responsibility to notify parents or guardians that the juvenile is in custody.

In *U.S. v. Juvenile (RRA-A)*, the arresting officer twice delegated his job of notifying a juvenile's parents or consulate - first to an AUSA and second to a secretary in the United States Attorney's office.¹⁷ (The juvenile was a foreign national whose parents were not in the United States. Therefore, the appropriate consulate should have been contacted.) The arresting officer must comply with § 5033 unless there are extenuating circumstances.¹⁸ This type of violation alone will not result in reversal, because it is not considered a due process violation. In this case, because the officer delegated his duties and the consulate was not contacted before the interrogation and the court ruled that these § 5033 violations were prejudicial. The juvenile's confession was suppressed.¹⁹

A juvenile must be brought before a magistrate "forthwith," according to § 5033.

The Ninth Circuit held that a 34-hour delay was reasonable where no magistrate judge was available, the agents were busy with other urgent cases, and the government agreed not to use the pre-arraignment statement of the juvenile.²⁰

A 31-hour delay caused by a U.S. Marshal policy that only accepted juvenile prisoners at the courthouse between 7:00 and 8:00 a.m. was ruled "prejudicial."²¹

Because the policy assured that the arraignment of a juvenile would be delayed longer than a "similarly situated adult,"²² it violated § 5033 and would not be considered an extenuating circumstance.²³

A juvenile's confession was considered voluntary when his will was overborne by his mother, not by police officers, after he invoked his right to silence.

Officers ceased questioning a juvenile after the juvenile invoked his right to silence. The juvenile's mother convinced him to talk freely with the officer, which led to his confession. The juvenile's parents were present during the interrogation and the law enforcement officer did not use any coercion to get the juvenile to confess. The juvenile's confession was deemed voluntary by the Tenth Circuit.²⁴

A juvenile's request for counsel and right to remain silent should be asserted in a clear manner.

In *Fare v. Michael C.*, after the juvenile was read his *Miranda* rights, he asked to speak to his probation officer.²⁵ The officers refused and the juvenile was again read his rights. This time he agreed to speak without an attorney present. A probation officer is duty bound to report the juvenile if the juvenile gets into trouble. Because of this a conflict of interest, the probation officer does not represent the juvenile in the same sense as an attorney.²⁶ There is no right to a

¹⁷ 229 F.3d 737 (9th Cir. 2000).

¹⁸ *Id.* at 745.

¹⁹ *Id.* at 747.

²⁰ *U.S. v. Doe*, 701 F.2d 819, 824 (9th Cir. 1983).

²¹ *U.S. v. John Doe*, 219 F.3d 1009 (9th Cir. 2000).

²² *Id.* at 1013.

²³ *Id.* at 1014.

²⁴ *U.S. v. Erving L.*, 147 F. 3d 1240 (10th Cir. 1998).

²⁵ 442 U.S. 707 (1979).

²⁶ *Id.* at 720.

probation officer during questioning; nor does such a request constitute an invocation of the right to remain silent. The juvenile never requested an attorney. Based on the taped interrogation, using the totality of the circumstances test, the Court decided that the juvenile clearly waived his *Miranda* rights.

CONCLUSION

Once a juvenile is in custody, the arresting officer must make a good faith effort to notify the juvenile's parents or guardian to tell them that the child has been taken into custody, what offense the child was accused of committing and the juvenile's *Miranda* rights. A juvenile's *Miranda* rights must be given in a language that the juvenile can understand. The confession must also be otherwise voluntary. If the juvenile requests an attorney or invokes his/her right to remain silent, the interrogation must stop immediately. The juvenile must appear before a magistrate "forthwith." If the juvenile is not afforded these due process rights, the confession may be suppressed.