

Special Considerations for Youthful Offenders: Interrogation

A. *In re Gault*, 387 U.S. 1; 87 S. Ct. 1428; 18 L. Ed. 2d 527 (1967)

1. Two important holdings:
 - Right to counsel: Fourteenth Amendment Due Process Clause requires that an alleged juvenile (and parents) must be notified of the juvenile's right to representation by counsel, and that counsel will be appointed if they are unable to afford counsel.
 - Privilege against self-incrimination: Fifth Amendment privilege against self-incrimination is applicable to alleged juveniles as it is with adults. The Supreme Court recognizes "special problems" in dealing with juveniles, but does not mandate any additional protection.

B. The Right to Counsel and Interrogation Procedures in North Carolina

1. N.C. G.S. 7B-2000: Automatic Right to Counsel
 - Alleged juveniles are presumed indigent, and are provided to counsel as a matter of right.
 - This right is afforded "unless counsel is retained for the juvenile." Note: If the parent actually retains counsel, for whom does the attorney work? What if the parent is the victim?
2. N.C. G.S. 7B-2101: Extra Protection for Youthful Offenders
 - If the juvenile is 14 or older, the juvenile must be told, in addition to the standard *Miranda* rights, that the juvenile has a right to have a parent, guardian or custodian present during questioning.
 - If the juvenile is under the age of 14, no in-custody admission or confession can be admitted unless a parent, guardian or custodian was present during questioning.

C. Jurisprudence: Extra Protection for Youthful Offenders?

1. Relevant case law regarding interrogation:
 - *State v. Fincher*, 309 N.C. 1, 305 S.E.2d 685 (1983): a juvenile's right to have a parent present under 7B-2101 should

be afforded the same protection as having an attorney present under constitutional protections; however, under *State v. Smith*, 317 N.C. 100, 343 S.E.2d 518 (1986), the court found that failure to advise a juvenile of his right to have a parent present under the same provision is not an error of "constitutional magnitude" because the law does not originate from the Constitution, therefore the burden to show prejudice against the juvenile is borne by the juvenile, not by the State.

- *State v. Flowers*, 128 N.C. App. 697, 497 S.E.2d 94 (1998): The interrogation officer does not need to explain the Miranda warning in any greater detail to an alleged juvenile than to an adult.
- *State v. Branham*, 153 N.C. App. 91, 569 S.E.2d 24 (2002): Defendant (16 years old at the time of the offense) convicted of three felony drug charges. Upon being questioned by police officers, the defendant asked for his mother to be present under 7B-2101 (which the court found to apply to persons under 18). The mother was at the police station, but told the officers that she did not want to be present when the defendant gave his statement. Relying on previous decisions, the court held that a parent or guardian does not have the ability to waive the defendant's right to have her present during his interrogation.

D. Increase of SROs and Crimes Being Reported from School

1. Current State of School Resource Officers (SROs) in North Carolina: 2003-04 School Year

- 747 current SROs, from 243 in 1996
- 115 of 117 school districts have at least one SRO, and 99 counties have an SRO presence in at least one school
- 78% of all high schools have an SRO exclusively assigned
- 61% of all middle schools have an SRO exclusively assigned
(Source: North Carolina Department of Juvenile Justice and Delinquency Prevention Center for the Prevention of School Violence web site statement : www.cpsv.org)

2. School Crime and Violence Statistics: 2002-03 School Year

- 8,548 reportable acts of crime and violence, down from 9,921 acts in 2001-02
- four most reported acts: possession of a controlled substance, possession of a weapon on school property (not a firearm/explosive), assault on a school official, possession of

an alcoholic beverage

- five offenses not reported that comprise all but two of the most common juvenile offenses: simple assault, misdemeanor larceny, injury to personal property, disorderly conduct, communicating threats (other two offenses: felony breaking and entering, felony larceny)

(Sources: North Carolina Public Schools Press Release - 11/5/03, North Carolina Department of Juvenile Justice and Delinquency Prevention 2003 Annual Report)

3. More SROs + More Juvenile Offenses Occurring at School = More Opportunity for Interrogation?

- what would constitute "in custody" in a school setting?
- does an SRO presence in an "administrative investigation" change a non-custodial setting?