

Waiver of Counsel

Ensure young people have legal counsel



Children in the justice system should not easily give up their right to an attorney. However, the reality is that many young people waive their right to counsel without ever speaking to an attorney or understanding the consequences.

Juvenile Rule 3, enacted by the Ohio Supreme Court on July 1, 2012, provides some protections for juvenile defendants. However, the rule is limited in scope.

What is Juvenile Rule 3?

The Ohio Supreme Court creates rules that govern the ways courts around the state operate. In 2006, the Office of the Ohio Public Defender, Children's Law Center, and ACLU of Ohio **asked the Court to amend its rules to protect juveniles from waiving their right to counsel when it may be against their best interests.** After several years of examination, the Court approved the rule, requiring that children who face possible loss of liberty consult with an attorney before waiving counsel.

Under Juv. R. 3, youth are **only** able to waive their right to counsel if:

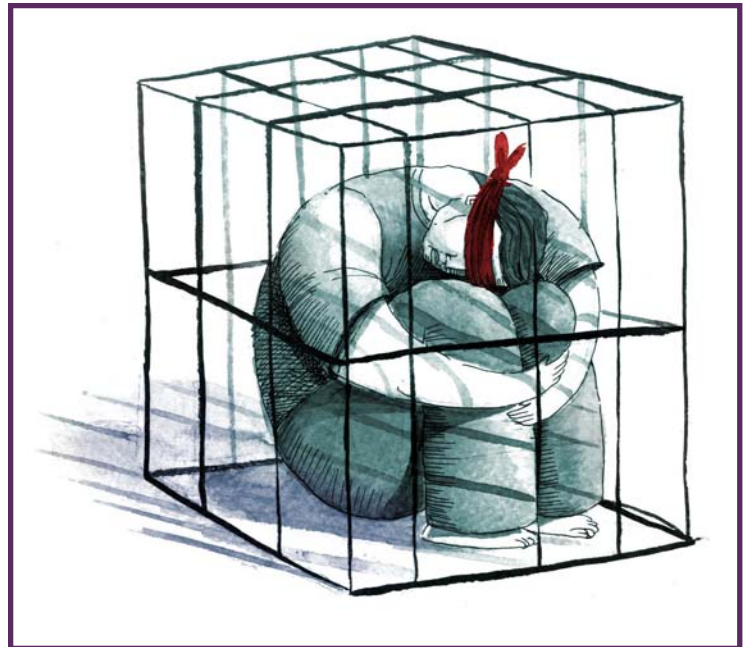
- They have consulted with an attorney;
- The waiver is made knowingly and intelligently after the judge gives detailed instructions in writing and on the record.

Under current law, how can a juvenile waive their right to counsel?

A juvenile **must** speak with an adult before he or she waives their right to an attorney. This person may be a parent, guardian, custodian, or counsel. Oftentimes, the adult may not understand the legal ramifications of proceeding without an attorney or understand what is in the best legal interest of the child. **Juvenile Rule 3 guarantees that a person with legal expertise, who has an ethical obligation to provide adequate legal advice, will consult with the juvenile.** It also helps to ensure the young person understands the consequences of waiving their right to counsel.

Adults can waive their right to counsel. Should juveniles be any different?

Yes. Our justice system has different rules for juveniles and adults because they are fundamentally different. The U.S. Supreme Court has consistently recognized that children are different than adults in the justice system. Many scientific studies show that young people are not as psychologically or emotionally developed as adults. **As a result, they may not fully appreciate the consequences of their actions and grasp legal issues in the same way.**



Young people also may not have the capacity to assist in their defense or represent themselves, which is a major difference from most adults.

Will providing attorneys to more juveniles increase costs?

It depends. Counties across Ohio have very different courtroom practices. Places where kids do not routinely waive their right to an attorney may not have a tremendous increase, but those where they do may see some increase. **However, providing adequate representation to more youth may lead to cost savings because those juveniles are less likely to plead guilty, which often results in detention or probation.** Young people are better served when diverted away from the justice system and into rehabilitative or educational programs to get the help they need. In addition, the more youth kept out of detention and probation, the better their likelihood of staying out of the juvenile and adult justice systems in the future.

All juveniles should be represented by counsel

All children should be represented by an attorney when they interact with the justice system. Because the justice system is complex and because children are different than adults, we believe that children should be prohibited from waiving their right to counsel. This is a goal we still need to accomplish to ensure juveniles receive fair treatment and justice.

For more information, go to www.acluohio.org.