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# A Juvenile's Right to Waive Counsel in the State of Georgia

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## A Juvenile's Right to Waive Counsel in the State of Georgia

### Guide Information

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### Guide Index

[Home](#)

[Primary Sources](#)

[Secondary Sources](#)

[Interest Groups and Associations](#)

## Home

### Scope

This guide provides an overview of the law surrounding the right of a juvenile to waive counsel in delinquency proceedings in the state of Georgia. The resources in this research guide include case law, secondary materials, and internet resources on the topic of a juvenile's right to waive counsel in delinquency proceedings. This guide is intended to assist attorneys, law students and other interested parties with little or on familiarity with this subject matter in gaining a better understanding of the relevant law. At the end of the guide you will find internet resources that will allow you to track the changes in the Georgia juvenile code.

### Overview

In 1969, just two years after Gault, Georgia recognized that in delinquency proceedings that may result in the limitation of a juvenile's freedom, the juvenile and his or her parents must be notified of the juvenile's right to be represented by counsel. Just as in proceeding outside of juvenile court a juvenile is allowed to waive his or her right to counsel. However, for juveniles the right to counsel is not exclusive. A juvenile may waive their right to counsel unless the juvenile is not represented by his or her parent or guardian. The plain reading of Georgia law does not leave question of legal representation for potential delinquents. Case law, state statutes, and the principles from the United States constitution require that a child have legal representation, yet the implementation of what is on the books is difficult.

There are four categories governing the waiver of counsel for trial. First, some states require that a decision to waive counsel by a juvenile must be with consultation with counsel. The second category of cases involves the right of juvenile to waive counsel only after adult advice or consultation. The third category of cases say the right to counsel is only waivable when the minor is represented by their parent or guardian, this is currently where the state of Georgia falls. Lastly, the fourth category is where the right of counsel is non-waivable under certain circumstances. In two cases out of the state of Illinois the court specifically barred the waiver of counsel by persons under the age of 18, when the penalty was greater than a fine, in other words cases where the juvenile's liberty was at stake. The waiver of the right to counsel is not without specific guidelines. When a court is looking at the validity of any waiver of the right to counsel they use the "totality of the circumstances" test.

### Disclaimer

This research guide is a starting point for a law student or an attorney to research the right of a juvenile to waive counsel in a delinquency proceeding in Georgia. The right of a juvenile to waive counsel is a complex area of law with a myriad of information that is in the works of being reformed. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law library or consult an attorney.

### About the Author

Michelle J. Nwaogu will graduate from Georgia State University College of Law in May, 2012. Before attending law school, Ms. Nwaogu graduated from the University of Georgia in Athens with a Bachelor of Arts in Criminal Justice. For more information about this bibliography, please contact Professor Nancy Johnson via e-mail at [njohnson@gsu.edu](mailto:njohnson@gsu.edu).

[Back to Top](#)

## Primary Sources

### Georgia Statutes

Georgia Code Title 15 Chapter 11 covers juvenile proceedings. The Official Code of Georgia §15-11-6 covers a juvenile's right to counsel.

O.C.G.A. §15-11-6 (a) provides that "an indigent person is one who at the time of requesting counsel is unable without undue financial hardship to provide for full payment of legal counsel and all other necessary expenses for representation."

O.C.G.A. §15-11-6 (b) provides that, "except as otherwise provided under this article, a party is entitled to representation by legal counsel at all stages of any proceedings alleging delinquency, unruliness, incorrigibility, or deprivation and if, as an indigent person, a party is unable to employ counsel, he or she is entitled to have the court provide counsel for him or her. If a party appears without counsel, the court shall ascertain whether such party knows of his or her right to counsel and to be provided with counsel by the court if he or she is an indigent person. The court may continue the proceeding to enable a party to obtain counsel and shall provide counsel for an unrepresented indigent person upon the request of such a person. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more parties conflict, separate counsel shall be provided for each of them."

### Rules and Regulations

The following sections of the Code of Federal Regulations are relevant to the Juvenile Justice and Delinquency Prevention Act:

Title 28, Chapter 1, Part 18 Consists of the Office of Justice Programs Hearing and Appeal Procedures

Title 28, Chapter 1, Part 22 Covers the Confidentiality of Identifiable Research and Statistical Information

You can access the Code of Federal Regulations using one of the following:

- [Cornell University Law School](#)
- [Westlaw](#) Law Students Only. Users will need to log-in with a Westlaw username and password.
- [LexisNexis](#) Law Students Only. Users will need to log-in with a LexisNexis username and password.

### Case Law

#### Leading Supreme Court Case

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

A fifteen year old was taken into custody for making lewd phone calls. The police did not notify his parents that he was a rested and he was committed to the State Industrial School until the age of 21. The Supreme Court held that juvenile proceedings had to comply with the requirements of the Fourteenth Amendment. These requirements included adequate notice of charges, notification of parents and the child of the right to counsel, opportunity for confrontation and cross-examination at hearings, and safeguards against self-incrimination.

#### Federal Courts

*McLemore v. Cubley, 569 F.2d 940 (5th Cir. 1978)*

A class of youth comprised of juveniles who had been or would be adjudicated delinquent challenged an order that said juveniles could constitutionally waive their rights to counsel in delinquency proceedings without the assistance of counsel. The court decided that the lack of counsel in arriving to the decision to waive counsel did not violate due process.

*Phillips v. Smith, 300 F. Supp. 130 (S.D. Ga. 1969)*

A sixteen year old boy plead guilty to the charges of armed robbery with the recommendation for life imprisonment and received a life sentence on each count. The court held that there was no affirmative showing of a valid and effective waiver of his right to counsel.

*Smith v. Crouse, 413 F.2d 979 (10th Cir. 1969)*

A fifteen year old youth entered a plea of guilty that carried a life sentence. The court affirmed the lower courts ruling that an understanding and intelligent waiver of the juvenile's constitutional right did not occur.

#### Georgia Courts

*A.C.G. v. State, 131 Ga. App. 156, 205 S.E. 2d 435 (1974)*

The juvenile committed and confessed to theft. After speaking with his parents he decided to waive his right to counsel and make a statement. The court found the waiver of right to counsel to be valid.

*In Interest of T.D.W., 229 Ga. App. 273, 493 S.E.2d 736 (1997)*

The juvenile was adjudicated delinquent after leaving the scene of an accident, reckless driving and aggravated assault. The court reversed the ruling of delinquency holding that there was no knowing waiver of the right to counsel.

*K.E.S. v. State, 134 Ga. App. 843, 216 S.E.2d 670 (1975)*

The judgment of delinquency was vacated based on the finding that the trial court failed to appoint an attorney to represent the defendant you had violated her probation.

## Legislation

In the year of 1971 Georgia passed its juvenile code. Since that time much has changed with no review on how the code is impacting juveniles, nor does it reflect the latest scientific findings on child and brain development and their cognitive ability and rational thinking. Forty years later the rules on the books in Georgia remain unchanged. The judges and lawyers who use the current code every day describe it as "difficult to use, lacking in clarity, and outdated." In addition, a broad consensus of juvenile court judges, probation officers, social workers, attorneys and other stakeholders agree that the current code needs to be modernized and streamlined. In 2005, the General Assembly recognized that the current code is out of date by passing a resolution calling for a complete overhaul of the juvenile code. There are noted difference form the proposed model code and the pending legislation.

The pending legislation House Bill 641/Senate Bill 127 currently reads: 15-11-475. (a) A child shall have the right to be represented by an attorney at all proceedings under this article. (b) A child's parent, guardian, or legal custodian shall not waive the child's right to be represented by an attorney. (c) A child may waive the right to an attorney only after consultation with an attorney. (d) Prior to the detention hearing, if any, the court shall appoint a qualified and competent attorney to represent the child unless an attorney has been retained and appears on behalf of the child. Nothing in this subsection shall prohibit a judge from releasing a child from detention prior to appointment of an attorney. (e) Upon presentation by an attorney for the child of the order of appointment or a court order specifically allowing such access, any state or local agency, department, authority, or institution and any school, hospital, physician, or other health or mental health care provider shall permit the child's attorney to inspect and copy, without the consent of the child or the child's parent, guardian, or legal custodian, any records relating to the child involved in the case.

[Back to Top](#)

## Secondary Sources

### Treatises

Georgia Juvenile Practice and Procedure with Forms: §9:18. Trial Rights – Mark H. Murphy

This treatise provides background information on juvenile due process rights overall and especially during trial. The treatise points to the rules that must be followed according to the Uniform Rules for the Juvenile Courts.

### Legal Encyclopedias

Listed Below are relevant legal encyclopedias that will assist in your research. These encyclopedias can be found on Westlaw or LexisNexis.

Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children § 75

Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children § 76

22 Ga. Jur. Criminal Law § 45:1

This section, updated in 2011 covers the issues of delinquency, unruliness or deprivation of a minor

### American Law Reports

A.L.R. provides information on specific legal issues, together with a complete list of every case, in every jurisdiction that discusses it. A.L.R. saves hours of research time when one is trying to quickly familiar themselves with an area of law. This series can be found on [Westlaw](#) or [LexisNexis](#).

G.L. Blum, Annotation, Validity and Efficacy of Minor's Waiver of Right to Counsel, 101 A.L.R. 5th 351 (1997).

This A.L.R. was originally published in 1997, but has since then been updated to include new and relevant case law. This article covers the situations in which a minor's right to counsel is valid and how the various jurisdictions vary in their interpretations of these rights.

M.F. Hill, Applicability of rules of evidence to juvenile transfer, waiver, or certification hearings, 37 A.L.R. 5th 703 (1996).

This A.L.R. was originally published in 1996, but has since been updated to include new and relevant case law. This volume covers the applicability of the rules of evidence as it relates to waiver, and juvenile court proceedings.

C.M. Bailey and J.M. Zitter, What constitutes assertion of right to counsel following Miranda warnings – state cases, 83 A.L.R. 4th 443 (1980).

This A.L.R. was originally published in 1980, but has since been updated to include new and relevant case law. This volume discusses the right to counsel after an issuance of Miranda warnings

## Law Review Articles

**The Next Generation of Child Advocacy: Protecting the Best Interest of Children by Promoting a Child's Right to Counsel in Abuse and Neglect Proceedings** by Hon. Steven C. Teske and Melissa Dorris Carter. 13 Ga. St. B.J. 22 2007

## Books

American Juvenile Justice: Cases, Legislation and Comments

Clifford Dorne & Kenneth Gewerth

Call Number: KF9778 .D67 1995

This casebook provides appellate cases along with editorial comments on the Fourth and Fifth Amendment rights of juveniles.

Children and Juvenile Justice

Ellen Marrus & Irene M. Rosenberg

Call Number: KF9794 .M37 2007

This book covers issues relating to children in juvenile court and delves into the history of America's juvenile court system. . The authors focus on the representation of delinquents in the courts of New York California, and Texas.

Children's Rights Under the Law

Samuel M. Davis

Call Number: KF479 D.375 2011

Relays the rights of children under the law as it relates to life liberty and property. The book also hones in on juvenile delinquency and the differing treatment between children and adults.

The Constitutional Rights of Children: In re Gault and Juvenile Justice

David S. Tanenhaus

Call Number: KF228. G377 T36 2011

Tanenhaus narrates how the ACLU litigated Gault by following the assumption that juvenile courts should not follow the traditional methods of criminal procedure.

Juveniles' Waiver of Rights: Legal and Psychological Competence

Thomas Grisso

Call Number: KF9813 .G74 1981

Through the use of recurrent issues in juvenile law concerning interrogation of juveniles and the validity of their confessions, Grisso looks at the key decisions a youth makes in the justice system from a psychological perspective. This book explores the competence of juveniles to waive rights to silence and legal counsel.

## Blogs

[The Future of Children](#)

A law blog focused on prevalent issues in Juvenile Justice.

[Reclaiming Futures](#)

A blog community, devoted to helping teens overcome drugs, alcohol and crime.

[Global Youth Justice Daily Blog](#)

This blog is updated each weekday with relevant information on teen court and other issues related to juveniles.

## Useful Websites

### [JUSTGeorgia](#)

JUSTGeorgia is a statewide juvenile justice coalition of community organizations and individuals created to advocate for change to Georgia's juvenile code.

### [Barton Child Law & Policy Center](#)

This center is directed by Emory Law faculty, along with graduate and law students work to promote and protect the legal rights and interests of children in the juvenile justice system.

[Back to Top](#)

## Interest Groups and Associations

### Federal Agencies

#### [U.S. Department of Health and Human Services](#)

This is a federal initiative covering issues of child abuse and neglect. Since 1996, the Office on Child Abuse and Neglect has continued to lead and coordinate the Federal Interagency Workgroup on Child Abuse and Neglect (FEDIAWG). Over 40 Federal agencies are represented. The FEDIAWG meets in-person on a quarterly basis and various Subcommittees meet on a more regular basis via conference calls. The overall goals of the FEDIAWG are:

- To provide a forum through which staff from relevant Federal agencies can communicate and exchange ideas concerning child maltreatment related programs and activities;
- To collect information about Federal child maltreatment activities; and
- To provide a basis for collective action through which funding and resources can be maximized.

### Interest Groups/Public and Private Associations

#### [Commonweal: Juvenile Justice Program](#)

Commonweal's Juvenile Justice Program is dedicated to the establishment of laws, policies and programs that serve the juvenile justice goals of crime prevention, treatment and rehabilitation within a context of public protection. They also specialize in the development of laws, policies and programs for high-risk youth.

#### [Georgia Juvenile Justice Association](#)

The stated mission of the association is: Through advocacy, education, information sharing and training create networking opportunities for Georgia Juvenile Service workers to learn and implement the best practices in Juvenile Delinquency prevention, supervision, treatment and rehabilitation.

#### [Georgia Association of Counsel for Children](#)

The stated mission is to promote the well-being of Georgia's children by improving the quality of courtroom advocacy on their behalf. To achieve this goal the GACC provides its members with information, training, and practice support.

#### [Governor's Office for Children and Families – Juvenile Justice](#)

"The Department of Juvenile Justice provides supervision, detention and a wide range of treatment and educational services for youths referred to the Department by the Juvenile Courts, and provides assistance or delinquency prevention services for at-risk youths through collaborative efforts with other public, private and community entities."

[Back to Top](#)

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