



Your Right to an Attorney

The Law

DO I HAVE THE RIGHT TO HAVE AN ATTORNEY REPRESENT ME?

Yes. The right to an attorney (lawyer) is considered to be the most important right by many people. You have the right to counsel in delinquency and child protection matters. Your right to an attorney is separate from your parent's right to an attorney. Your attorney represents you, not your parents. If your parents wish to have an attorney represent them, they may do so. If your parents choose not to get an attorney for you, the court can appoint one to represent you.

WHAT DOES AN ATTORNEY DO?

An attorney, often a public defender, acts on behalf of you, the client. In protecting your rights and advocating your lawful position, the attorney inquires into the facts, makes certain the steps in the process are followed correctly, decides if you have a defense and, if so, prepares and submits it. The attorney makes motions, provides discovery, presents evidence, and cross-examines witnesses. An attorney is different from a guardian ad litem, whose job is to act in your best interests, which might be different than what you want. An attorney must do as you wish.

WHEN DOES THE RIGHT TO AN ATTORNEY START?

Either at the time a detention hearing is held or if no detention hearing is held at the time the petition is filed. You have the right to a lawyer if you are placed in a line-up related to a delinquent act. You also have the right to counsel before being questioned by the police if you have been taken into custody.

WHEN DO I FIND OUT ABOUT MY RIGHT TO AN ATTORNEY?

Juveniles are advised of their right to an attorney at several points in the process:

- orally when taken into custody,
- through written advisory contained in a summons,
- orally before a detention hearing, arraignment, and trial, and
- orally at a reference hearing.

DO I HAVE TO PAY FOR AN ATTORNEY?

If you and your parents can't afford an attorney, the court will appoint one for you and pay for it. If you want an attorney and your parents can afford to pay for your attorney, but they have not gotten one for you, the court will appoint an attorney for you and may order your parents to pay for one. Your parents will have the chance to explain their financial situation to the court before they will be required to pay for your lawyer.



HOW MUCH DOES A LAWYER COST?

The cost of a lawyer varies a great deal. Some private criminal defense lawyers charge more than \$250 per hour. Most juvenile defense lawyers charge much less. The average hourly rate depends on the crime involved, where you are located, and the experience of the lawyer. Don't be afraid to ask how much it will cost.

HOW DOES THE COURT DECIDE IF MY PARENTS AND I CAN AFFORD TO PAY FOR MY ATTORNEY?

You and your parents might have to fill out financial statements. The court will look at your and your family's assets (the things you own and the money you have) and liabilities (the money you owe) and decide if you can hire a lawyer without substantial hardship to you or your family. Your family's assets and your assets will be considered together.

ARE LAWYERS PAID FOR BY THE COURT GOOD LAWYERS?

Yes. Lawyers paid for by the court are called public defenders. They are usually very good lawyers. They often have years of experience representing juveniles in delinquency and protection matters. They have dedicated their careers to representing people who can't afford to pay for a lawyer. They believe that everyone should have access to a lawyer.

WHAT IF I DON'T WANT AN ATTORNEY?

You have the right to waive your right to counsel, which means to refuse to have an attorney represent you. But to do this you must understand what you are doing and voluntarily agree to the waiver. Voluntary means without coercion, threats, or promises. To understand what you are doing means that you must be able to weigh the reasons for and against having an attorney. In making its decision, the court looks at the person's age, maturity, intelligence, education, and ability to comprehend, and other circumstances. The court might question the voluntariness of your waiver if it appears that you are being persuaded to waive counsel against your wishes. Parents or guardians may not waive a child's right to counsel on the child's behalf.

Even if you waive counsel, the court can appoint an attorney (standby counsel) to be present so that you can request help at any time.

Even if you think that you do not want a lawyer, you should talk with one about your decision to waive your right to a lawyer.

CAN I CHANGE MY MIND AFTER I WAIVE MY RIGHT TO A LAWYER?

Yes. You can change your mind at any time. You simply must say that you want a lawyer. Police may not question you again until you have a lawyer.



WHAT IF I DON'T LIKE MY PUBLIC DEFENDER?

Although you do not have an automatic right to get a different lawyer, if you can show that your present lawyers isn't representing you effectively, isn't trying and is simply furnishing perfunctory (superficial) representation, or that some other extreme circumstance exists, a different lawyer will be appointed.

Your Right to an Attorney

Questions

1. When a lawyer represents you, what are the seven things that he or she will do?

True or False _____ ●

Place a “T” next to the statements you believe are true and an “F” next to the statements you believe are false.

_____ Your attorney is required to recommend what is in your best interest.

_____ Once you waive your right to a lawyer, you cannot change your mind.

_____ If you have enough money, you will be required to pay for your own lawyer.

_____ Public defenders usually are lawyers who are not very experienced.

_____ Your parents can waive your right to an attorney for you.

_____ If your parents don't want to pay for a lawyer, you can still get one.

_____ You need to understand what you are doing to waive your right to a lawyer.

Your Right to an Attorney

Activity: What do you think?

Although juveniles have the right to a lawyer, they sometimes choose not to have one represent them.

1. List three reasons why you would want a lawyer to represent you.

2. List three reasons why juveniles choose not to use a lawyer.

Your Right to an Attorney

Activity: You be the judge

You are the judge in the following cases. Decide if you believe that the juvenile knowingly and voluntarily waived his or her right to a lawyer. Explain why or why not.

1. Fowler, age 16, is being charged with burglarizing a Post Office. She has never been arrested before, never been in jail, never even been questioned by the police. Her father keeps telling her to “tell the truth or you’ll get in lots more trouble.” When advised of her right to a lawyer, Fowler says she doesn’t want one.

Did Fowler knowingly and voluntarily waive her right to an attorney? Why or why not?

2. Matt, age 14, is being questioned about a bombing at his school. His mother is present during the questioning and tells Matt “tell the truth or I’m going to clobber you.” Matt is always in trouble. He doesn’t listen to his teachers or his parents. He has been picked up by the police on several occasions, and has spent some time in juvenile detention. He could be an “A” student if he tried. He does not want a lawyer.

Did Matt knowingly and voluntarily waive his right to an attorney? Why or why not?

3. Savannah is 17 years old. She dropped out of school when she was 16. She was enrolled in special education classes when she was in school. She has taken several intelligence tests, with scores ranging from 60 to 73. She is being charged with attempted murder of her former boyfriend. She stabbed him with a screwdriver many times. She says that she does not want a lawyer.

Did Savannah knowingly and voluntarily waive her right to an attorney? Why or why not?

4. Cole is 12 years old. He and a friend were shooting his father's gun along the riverbanks. They became very reckless, shooting into the trees. One of the bullets killed a park employee. Cole is very immature for his age. He does not understand that he is in a very serious situation. He laughs about it. When told of his right to a lawyer, he said "I don't need a lawyer, I don't even know what a lawyer does!"

Did Cole knowingly and voluntarily waive his right to an attorney? Why or why not?

Your Right to an Attorney

Activity: Creating a brochure

**What do young people need to know about their right to an attorney?
Design an 8 ½ x 11 brochure or flyer that could be distributed to juveniles.
Make sure that it includes the most important things they need to know.**

Steps:

1. Select the information you want to share. You will not want to put all of the information provided on your brochure. Pick the most important points.
2. Write the copy (words). Remember to be clear and brief. Check spelling.
3. Design the brochure or flyer. A brochure is usually folded with information on all sides. A flyer usually has important information on only one side so that it can be hung on a wall.
4. Select your typeface (font) and size. Headlines should be larger than the other text to create interest. You might also underline them or make them bold. Graphics also adds interest.
5. Print your brochure/flyer at a couple of points during the project to check your work. Does it look like you want it to look?