



# POLICE / PROSECUTOR UPDATE

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It has been requested that we review the procedure required to obtain a valid confession from a *juvenile* suspect. Obviously, as is the case with adults, the juvenile must be advised of his *Miranda* rights. And in the case of juveniles, police must also comply with Indiana statutory law, specifically IC 31-32-5. Before getting into a discussion of the statute, however, it must be noted first and foremost that if a juvenile is *not in custody*, neither the safeguards of *Miranda* nor the procedural safeguards of the statute apply. Also, as with adults, a juvenile's spontaneous or volunteered statements, not in response to questioning, are admissible regardless whether the statutory requirements have been met.

A confession or statement of a juvenile will not be admissible unless there has been a valid waiver of the juvenile's statutory and constitutional rights. For purposes of our discussion, IC 31-32-5-1 provides that these rights can be waived *only* "by the child's custodial parent, guardian, or custodian *if*: (A) that person knowingly and voluntarily waives the right; (B) that person has no interest adverse to the child; (C) meaningful consultation has occurred between that person and the child; and (D) the child knowingly and voluntarily joins with the waiver."

"Custodian" means a person with whom the child resides. "Guardian" means a person appointed by a court to have the care and custody of a child. Our Supreme Court has interpreted "guardian" to include not only a court-appointed guardian but also *de facto* guardians. For example, one case held that the grandfather of a juvenile accused of killing his parents was the juvenile's *de facto* guardian. Another case held that a juvenile's grandmother was his *de facto* guardian even though the juvenile's adoptive parents were alive. The juvenile had run away from his adoptive parent's home 2 years

earlier and had been living with his grandmother with the parents' knowledge. Yet another case held that an 18-year-old adult with whom a 17-year-old juvenile lived was a "custodian" who could act as a consulting adult for the juvenile. The juvenile's parents were both incarcerated, and the mother had placed him in the custody of the 18 year old. An adult member of the juvenile's family declined to be associated with him, and finally, the juvenile brought the 18 year old with him to the police station. Lastly, courts have held there is no requirement that the consultation be with both parents; one parent is enough.

Our Supreme Court has stated that the *meaningful consultation* requirement "may be satisfied by *either* actual consultation of a meaningful nature *or* by the *express* opportunity for such consultation, which is then foresaken in the presence of the adult by the juvenile." To be meaningful, the consultation must not take place in the presence of the police. Also, to be meaningful, the consultation must be timely. It must occur after the advisement of the juvenile's rights but prior to the decision to waive those rights and make a statement. The prosecution must show more than the mere presence of the parent, guardian, or custodian. The prosecutor has to *affirmatively demonstrate* that the juvenile and the adult were afforded a meaningful opportunity to consult together.

Finally, the statute requires that the person with whom the juvenile consults not have an interest "adverse" to the child. This is a very fact-sensitive question so our courts have not established a definition of adverse in this context. However, our Supreme Court has indicated that the consulting adult should be a mature person who by nature would have the best interests of the juvenile uppermost in his mind.