

Police Interrogations—Juveniles Under 14

Presence of Interested Adult is Mandatory if the Juvenile is Under Fourteen

When the juvenile is under the age of fourteen, the Commonwealth is required to show that the parent or the interested adult was:

- present
- understood the **Miranda** warnings, and
- had the opportunity to explain the rights to the juvenile

SIGNIFICANCE OF WAIVER: This is required so that the juvenile understands the significance of waiver of these rights.” **Commonwealth v. A Juvenile**, 389 Mass. 128 (1983).

OPPORTUNITY TO CONFER ABOUT THE JUVENILE’S RIGHTS: The investigating officials should *explicitly inform* the juvenile’s parent, or other interested adult, that the opportunity is being furnished for the two to confer about the juvenile’s rights.

Police Interrogations—Juveniles 14, 15, and 16

Massachusetts Allows A Juvenile To Waive Miranda At Age 14

There are two situations in which the law permits a juvenile (age 14, 15, and 16) to be lawfully subject to police custodial interrogation.

First Approach: Opportunity For Consult—*The Interested Adult Rule*

In **Commonwealth v. A Juvenile**, 389 Mass. 128 (1983), the SJC held when a juvenile reaches the age of fourteen, he or she may make a valid waiver of the **Miranda** warnings as long as the juvenile received, in addition to the **Miranda** warnings, the right that he or she has an opportunity to consult with an interested adult. If this procedure is followed, the interested adult must be informed of, and understand the significant of **Miranda**.

GENUINE OPPORTUNITY: This alternative requires that the juvenile have a “genuine opportunity” for the consultation. In **Commonwealth v. Alfonso A.**, ___Mass. ___ (2002), the SJC noted that, “in order for there to be any genuine consultation, the adult who is available to the juvenile must be informed of and understand the juvenile’s constitutional rights.” That requirement connotes the presence of an adult, or, at the very least, contact between the adult and the police so that the police may inform the adult of those rights. The Court also noted that “we need not rule out the possibility that something less than actual physical presence of the adult might suffice (e.g., interested adult participating through speaker telephone).”

OPPORTUNITY MUST BE IMMEDIATE AND AVAILABLE BEFORE WAIVER: The “genuine opportunity” for consultation that our cases envision is not merely a theoretical opportunity, that the juvenile may utilize at some future time, but an opportunity that is immediately and evidently available to the juvenile *before the juvenile waives his or her rights*.

NO ACTUAL CONSULTATION: It is not necessary for such a juvenile [14 years old or over], to actually consult with the interested adult. It is only the “**opportunity to consult**” that is critical. So long as the juvenile is at least fourteen and has had the opportunity for a meaningful consultation, the juvenile may make a valid waiver *without actual consultation*.

IMPORTANT NOTE: The very purpose of our rules pertaining to the opportunity for consultation with an adult is because most juveniles do not understand the significance and protective function of these rights even when they are read the standard **Miranda** warnings, they frequently lack the capacity to appreciate the consequences of their actions, and the opportunity for consultation with an adult prevents the warnings from becoming merely a ritualistic recitation wherein the effect of actual comprehension by the juvenile is ignored. If the juvenile needs to assert his rights in order to obtain the benefit of any consultation with an adult, the purpose behind the requirement is nullified. Therefore, if the police desire to proceed in this fashion, they should attempt to produce an interested adult in order to satisfy the “genuine opportunity to consult.” Any attempts for a **Miranda** waiver should occur subsequently.

Second Approach: Demonstration of High Degree of Intelligence & Sophistication

If the police proceed and elicit a waiver from the juvenile who has reached age fourteen without the genuine opportunity of an interested adult being present, the circumstances must demonstrate a high degree of intelligence, experience, knowledge, or sophistication on the part of the juvenile.

INTELLIGENCE AND SOPHISTICATION: In **Commonwealth v. Guyton**, 405 Mass. 497 (1989), the defendant had had “extensive contact with the police and juvenile authorities and was well aware of his **Miranda** rights.” The SJC held that it does not satisfy the requirement of intelligence, experience, knowledge and sophistication. Extensive contact with the police and other authorities by itself does not demonstrate unusual sophistication or knowledge about the **Miranda** rights. According to the evidence, the defendant, who had stopped attending school after the eighth grade and worked on a “cleaning crew” cleaning factories, responded to a detective’s question about whether he understood his rights by saying, “[Y]es, I’ve heard it before.” However, there is no evidence in the record to indicate that the defendant had “heard” the **Miranda** warnings in connection with any police or juvenile proceedings. The only other evidence on that point was the defendant’s testimony that he had heard **Miranda** warnings “[o]n T.V. . . . nobody ever read anything like that to me before.” Conversely, in **Commonwealth v. King**, 17 Mass. App. Ct. 602, 603, 610-611 (1984), a sixteen year old defendant was held capable of waiving his **Miranda** rights despite the unavailability of an interested adult. The defendant in that case had been involved with the court system since the age of eleven and one-half years, and had, two weeks prior to the arrest in question, exercised his right to consult with counsel and, after consultation, had remained silent.

EVIDENCE OF INVOCATION OF CONSTITUTIONAL RIGHTS: Where the juvenile actually invokes a constitutional right, it is a strong indication that the juvenile was indeed aware of and understood those rights and was capable, on his own, of asserting them.