

JUVENILE'S RIGHT TO ATTORNEY REPRESENTATION – NEW LEGISLATION

Governor Murphy recently signed [legislation](#) that provides juveniles the right to be represented by counsel at every critical stage of a court proceeding.

Critical stages of a court proceeding include, but are not limited to:

- Every court appearance by the juvenile.
- All post-dispositional appearances and any interrogation, identification procedure, and **other investigative activity involving the juvenile undertaken by law enforcement or prosecutorial personnel subsequent to the filing of the complaint.**

This new legislation establishes specific rights pertaining to juveniles:

1. Juveniles shall have the right, as provided by the Rules of Court, to be represented by counsel at every "critical stage" of a court proceeding.
2. During every "critical stage" of a court proceeding in a delinquency case, as specified in the legislation, the waiving of any right afforded to a juvenile shall be accomplished in the following manner:
 - a. A juvenile who is found to have mental capacity may not waive any rights except in the presence of and after consultation with counsel and unless a parent has first been afforded a reasonable opportunity to consult with the juvenile and the juvenile's counsel regarding this decision. The parent or guardian may not waive the rights of a juvenile found to have mental capacity.
 - b. Any such waiver shall be executed in writing or recorded. Before the court may accept a waiver, the court shall question the juvenile and the juvenile's counsel to determine if the juvenile is knowingly, willingly, and voluntarily waiving any right. If the court finds after questioning the juvenile that the waiver is not being made voluntarily and intelligently, the waiver shall be denied.
 - c. A juvenile who is found to lack mental capacity may not waive any right. A guardian ad litem* shall be appointed for the juvenile who may waive rights after consultation with the juvenile and the juvenile's counsel.
 - d. Waivers shall be executed in the language regularly spoken by the juvenile.

In light of this new legislation, Chiefs of Police should consult with their Municipal Attorney and, as appropriate, the County Prosecutor concerning the below considerations:

1. Evaluate existing policies and procedures to determine any necessary changes.
2. Determine if changes should be undertaken concerning the agency's training program, including the agency Field Training Program.
3. Ensure officers assigned to handle juvenile matters or as School Resource Officers (SROs) are specifically aware of this new legislation. SROs might be in a particularly vulnerable position as they might easily have contact with some students who have been served with a complaint.
4. Utilize this opportunity to review agency policies and procedures beyond juvenile's rights to attorney representation to ensure they are consistent with New Jersey Attorney General Directive 2020-12, [Establishing Policy, Practices and Procedures to Promote Juvenile Justice Reform](#).

If you have any questions, please contact your Law Enforcement Risk Control Consultant.

**Ad Litem: when someone is appointed to act in a lawsuit on behalf of a child or other person who is not considered capable of representing themselves.*