Approved: 4/10/98
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on March 16, 1998 in Room 313-

-S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Powell (excused)
Representative Haley (excused)
Representative Presta (excused)
Representative Mays (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee:
K. C. Groves, NAACP
Representative Swenson
Richard Ney, Attorney
Pedro Irigonegaray, Atttorney
Jacob Montgomery, (ACLU Intern) (High school student from Lawrence)
Patty Beedles (age 13)
Doctor George Thompson , Menninger Foundation
Kent Pelton
Nakita Vance, Hispanic Mid-American Coalition-(Wichita)
Ruby Bradley, concerned citizen (Wichita)
Kathy Brewer
Reverend Wanda McDaniels
Rovella Ritchey
Veronica Blackman

Others attending: See attached list

The Chair called the meeting to order. The Chair stated that **HB 2717** was heard in subcommittee, however, the subcommittee did not have the time to consider a recommendation on this bill. The Chair noted that there are two hearings scheduled for this bill, one for today to hear the proponents, and one for tomorrow to hear the opponents. The Chair informed the conferees that testimony time will be limited since there are a number of conferees.

HB 2717: **Alleged juvenile offender advised of right to remain silent, right to an attorney and right of parental presence; waiver of such rights**

K.C. Groves, Political Action Committee, NAACP, testified in support of **HB 2717.** The conferee stated that the NAACP supports the need to codify standards applicable to custodial interrogation of minors and considers this bill a first step toward that goal. The conferee stated that this bill, however, falls short in several important respects. The conferee stated that this bill ignores the fact that a child lacks the maturity, wisdom, intellect and communication skills to stand on an equal footing with a law enforcement officer. This bill ignores the need to keep parents at the center of a child's life. (Attachment 1)

In response to a question from the Committee, Conferee Groves stated the that NAACP would support increasing the age to at least 16.

Representative Swenson testified stating why he chose to co-sponsor **HB 2717.** Representative Swenson referred to a Wichita case concerning a 10 year old boy and what happened to him after he had been removed from his mother and placed in a juvenile detention facility. Representative Swenson stated that currently a child could be interrogated by police without a parent present and that child is expected to understand what waiving his rights means. Representative Swenson referred to the Kansas Supreme Court's unanimous decision handed down on March 13, 1998 which supports the purpose of this bill. Representative Swenson introduced Richard Ney the attorney who argued *B. M. B.'s case* before the Kansas Supreme Court.(Attachment 2)

Richard Ney testified in support of **HB 2717**. The conferee stated that despite the ruling of the Kansas

Supreme Court last Friday, **HB 2717** is still a very important piece of legislation because of two reasons. Conferee Ney stated that because the issue is protecting the rights of our children in our society that not only should the courts speak about this issue, but also the legislature. The conferee stated that in eighteen other states the type of interrogation this bill would prevent has already been outlawed. Conferee Ney stated that secondly, not only should legislation speak of this issue, but this bill helps codify the rules which the Supreme Court's ruling on Friday will implement. The bill addresses several procedural and operational issues. Conferee Ney stated that there are strong law enforcement reasons why this bill is important. The first reason is that there will be a decrease in the need for a number of hearings. The second reason is that this bill will benefit law enforcement by helping to foster trust of law enforcement officers. Conferee Ney stated that this bill along with the Kansas Supreme Court ruling will help protect the rights of children in this state.

In response to the Chair's question, the conferee stated that he asked the Supreme Court in his argument and his brief to create a per se rule and the courts agreed to do that. The bill is not fact specific and it would apply to the questioning of any defendant 11, 12, or 13 years old.

Referring to the language on page 2, concerning the admissibility or non-admissibility of any statement obtained by interrogation of a child under the age of 14, the Chair asked Conferee Ney his opinion as to whether language in two places on line 33, 34 and again on lines 42 and 43 should be restricted to evidence against the child, because this might be broad enough to prevent introduction of that statement in any proceeding. Conferee Ney stated that the ruling of the court is limited to the same language the bill contemplates here and that it would be inadmissible against a child in a CINC case.

In response to Committee questions as to why this legislation is needed, Conferee Ney stated that the legislature needs to speak on this issue as a matter of public perception. The conferee stated that this bill also relates in much more detail the procedures involved because the court's decision did not reach what specific warnings should be given.

Pedro Irigonegaray, Attorney, testified in support of **HB 2717**. Conferee Irigonegaray stated that with his practice in the judicial system in this state he has been involved with juveniles on many occasions. The conferee stated that the decision reached by the Kansas Supreme Court last Friday is an intelligent and reasonable decision. We need to go forward and codify the provisions contained in **HB 2717**. Responding to Committee discussion, Conferee Irigonegaray stated that the bill should exclude statements made by a child under 14 from proceedings other than the CINC proceedings. The conferee stated that if information is obtained inappropriately it should not be allowed to be introduced in any proceeding. The conferee stated that children under the age of 14 are very subject to the powers of authority. Conferee Irigonegaray suggested that the age of protection in this bill be expanded to age 16. (Attachment 3)

Jacob Montgomery, ACLU Intern from Lawrence, age 17, testified along with Patty Beedles, age 13, in support of **HB 2717**. Conferee Montgomery stated that even at seventeen he must have parental consent to rent videos, but under current law a ten year old is expected to sign away their constitutionally guaranteed rights without their parents' guidance. (Attachment 4)

Patty Beedles an eighth grade student at Lawrence Central Junior High School, testified in support of **HB 2717**. Conferee Beedles stated that children her age can not understand what it means to waive their Miranda rights. (Attachment 5)

The Committee members discussed with Conferee Montgomery the ages of children involved in gangs.

Doctor George Thompson, Menninger Foundation, testified in support of **HB 2717**. Conferee Thompson related information concerning the cognitive development of children. Conferee Thompson stated that children do not have the capacity to understand what their Miranda rights are and what they mean. The conferee stated that children do not have cognitive capacity to decide to waive their rights. The conferee stated that children by definition are coerced into waiving their Miranda rights if they are asked to do so by a law enforcement official in isolation from their parent(s). (Attachment 6)

The conferee and Committee members discussed issues concerning whether gang membership made it more or less likely to waive the Miranda warning. The Committee members and conferee discussed interviewing techniques used with children or juveniles. The conferee offered to provide information concerning interviewing techniques for children.

Kent Pelton of Topeka testified in support of **HB 2717**. The conferee related the experience his daughter had when she was falsely accused of transporting drugs in a book bag. The conferee stated that she did not waive her Miranda rights and the security officer got mad. The conferee stated that information was provided showing that his daughter was not involved. Conferee Pelton stated that the problem is that in this system his

daughter was presumed guilty before the facts were known.

Nakita Vance, Hispanic Mid-American Coalition from Wichita testified in support of **HB 2717**. The conferee stated that she works in a juvenile detention facility in Wichita and that children need this protection. (Attachment 7)

Cathy Brewer testified in support of **HB 2717**. The conferee referred to a listing of several states which already have some form of case law or statute in place regarding the waiver of rights by juveniles and parental notification which is attached to her written testimony. The conferee discussed a conversion she had with an attorney in Iowa City concerning experiences similar to *B.M.B.'s* . Conferee Brewer proposed changes to **HB 2717** as contained in her written testimony. (Attachment 8)

Reverend Wanda McDaniels, First Vice President of the Wichita NAACP, member of the State NAACP Political Action, mother, grandmother and children's rights activist testified in support of **HB 2717**. The conferee stated that the ruling in the *State v. Young* case was appropriate, however, that ruling should be expanded to apply to interrogation of all juvenile offenders, regardless of age. The conferee stated that the recent Kansas Supreme Court ruling on March 13, 1998, *In the Matter of B.M.B.*, page 21, stated that the holding in *Young* is not overruled, but limits its application to a juvenile 14 years of age and older. (Attachment 9)

Pastor Rovella Ritchey from Wichita testified in support of **HB 2717**. Conferee Ritchey stated that she is representing the religious sector and parents in requesting that this bill be passed. The conferee discussed children's vulnerability to authority particularly for those children who come from difficult economical and social backgrounds. The conferee stated that Supreme Court's decision was correct. The Conferee stated that the age on this bill should be 16 rather than 14. (Attachment 10)

Pastor Ritchey introduced Veronica Blackman, the mother of the child in *the Matter of B.M.B.* case. Mrs. Blackman was not able to discuss her son's case because she was under a gag order.

The Chair adjourned the meeting at 5:00 p.m.

The next meeting is scheduled for March 17, 1998.

HOUSE JUDICIARY COMMITTEE
GUEST LIST

DATE: 3-16-98

NAME	REPRESENTING
Shirley Ann Stew	
Veronica Gale Blackmon Green	
Rubena L Bradley	
Cathy Brewer	
Shireka Dedman	
Shana A Jones	
Kerri Pelton	
Jayme Pelton	
Kent Pelton	
John Jones	
Levi Vance	
Matthew Vance	
Chris Vance	
Rev Wanda M McDaniels	Concerned Citizen for welfare of Children of State NOAH Political action Committee
K L Jones	Ks State NAACP
Candace Lautt	Peace & Social Justice Center of S. Central Kansas
Nakita Vance	Hispanic / Native American Citizens
Pastor Bonita M Nichols	1650 E. Central Wichita
Richard Ney	

George Thompson MD

HOUSE JUDICIARY COMMITTEE
GUEST LIST

DATE: 3/16/98

NAME	REPRESENTING
PEDRO IRIGONEGARAY	SELF
Bob Eye	self
Kathy Freund	self
[illegible]	KCDAA
John Kleiner	self
Susan Lamb	Kearney Law Office
Heather Randall	Whitney Damron, P.A.
[illegible]	[illegible] Sen. Tyson
Kelley Kultala	City of Overland Park

#1 K.G. Grove

KANSAS STATE CONFERENCE OF BRANCHES
OF THE NAACP
POSITION STATEMENT

The Kansas State Conference of Branches of the NAACP supports the need to codify standards applicable to custodial interrogation of minors and lauds H.B. 2717 as a first step toward that goal.

That bill, however, falls woefully short in several important respects:

(1) It ignores the fact that a child, even a nascent genius, lacks the maturity, wisdom, intellect and communication skills to stand on an equal footing with a law enforcement officer trained and skilled in interrogation. That disparity in intellect, comprehension and skills is too great, and the potential life-long consequences too severe, to sanction any custodial interrogation of a minor without the parents' consent and advice of counsel.

(2) It ignores the need to keep parents at the center of a child's life in fulfilling in all areas, especially in fulfilling the parental duty to foster, nurture and protect children into adulthood so that they can function successfully as citizens and members of society. The State in its role as parens patriae should seek, at every opportunity, to strengthen, deepen and foster the parents' capacity to fulfill that role for their children. Requiring that parents be contacted and included in any interrogation of a minor would be an important step in that direction.

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Attachment 1

The Kansas State Conference of Branches of the NAACP urges you to strengthen H. B. 2717 by providing that minors should be interrogated in the presence of their parents; and that no waiver can be sought or obtained without the parents' prior consent.

Louisa A. Fletcher
LOUISA FLETCHER, President
Kansas State Conference of Branches,
NAACP

Chairman
Political Action Committee

Dated: _____

#2

STATE OF KANSAS

DALL A. SWENSON
REPRESENTATIVE, DISTRICT 97
TOPEKA ADDRESS:
STATE CAPITOL—431-N
TOPEKA, KANSAS 66612-1504
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER BUSINESS, COMMERCE & LABOR COMMITTEE
FEDERAL & STATE AFFAIRS COMMITTEE
JUDICIARY COMMITTEE

TOPEKA HOTLINE
DURING SESSION - 1-800-432-3924

March 16, 1998

TESTIMONY FOR HB 2717

HOUSE JUDICIARY COMMITTEE

Thank you for the opportunity to speak, as a father, on a bill that will allow other fathers and mothers to be present at a time when their child needs them most.

I remember the first time I read about the case of the 10 year old boy in Wichita. I only wish I had heard about it sooner. The newspaper story was an account of what happened to the boy after he had been removed from his mother and placed in a juvenile detention facility. The story sadly reported that he had been raped by older boys at the facility and was now frequently under suicide watch. Prior to his placement by the sate, this child's only brush with the law had been writing his name in wet cement.

As a father of a son the same age as this boy, I was deeply upset by what was happening. I made it my duty to get information about his case to see what might have gone wrong. The most surprising discovery of all was learning that my son or daughter could be interrogated by police without my wife or I being present and that my child was expected to understand what waiving his rights meant. After many conversations with plain average folks like myself, it appeared that few parents knew that this could happen to their child.

For that reason alone, I joined with Rep. Tom Klein to sponsor this long overdue piece of legislation.

It would be my hope that out of consideration for the trauma he has suffered and the long road of recovery he now faces, we, the Kansas Legislature might consider naming this bill *The Brandon Act* with the hope that this will one day help him to understand how his tragic misfortune resulted in a law guaranteeing certain protections for all Kansas children.

Whether this boy did or did not do what he was accused of is for someone else to decide. What we do know is that either way, he needed help and he finally got it from the man I am about to introduce.

As most of you know, the Kansas Supreme Court handed down a unanimous decision last Friday which fully supports the purpose of this bill. I am honored to present to you now, the attorney who argued this case before the court and did so free of charge because he, too, shared the outrage of a community of caring people who saw something that needed to be changed.

May I present to you now, Mr. Richard Ney.

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Attachment 2

#3
Pedro Irigonegaray

HOUSE BILL 2717 - AN ACT AFFECTING THE JUVENILE JUSTICE SYSTEM

Before the House Judiciary Committee

Chairman: Representative Tim Carmody

Ladies and Gentlemen:

I come to you today seeking your favorable vote on HB 2717. Historically, we have viewed our children differently than we view adults in our judicial system. See, K.S.A. 38-1601. In both the civil and criminal areas of the law, we understand that children are at a disadvantage when dealing with adults, because of their lack of maturity, development, education, and life experiences. As a result, in most instances, we do not allow for children to enter into binding legal contracts, we limit their rights to consume alcohol, to operate motor vehicles, and to vote, among others restrictions. We limit their rights for their protection.

Our criminal justice system differentiates between minors and adults. Children have historically been viewed as having different needs and, therefore, we provide them with different treatment. The treatment we had historically provided offending children was more analogous with a civil violation than a criminal conviction. This approach has changed and we now have, for children in Kansas over the age of 10, a juvenile court system in which, when the evidence presented rises to the level of guilt beyond a reasonable doubt, children are adjudicated of the offense, and they are subject to sanctions. The consequences may

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Attachment 3

lead to their incarceration up to age 23. At the accusatory stage, it is necessary to protect juveniles from making statements that could harm them for life. At this stage, the assistance of an adult is absolutely necessary

Since the implementation of the Kansas Sentencing Guidelines, juvenile records can be considered for enhancing the term of sentence if, as adults, those children are convicted of a crime. This is particularly true of sex crimes that are not expungeable. It is, therefore, all the more crucial that proper guidelines be established to protect the due process rights of children. We do not have a process just for the guilty; it is there, just as importantly, to protect the innocent. Further, our Constitution mandates we be considered innocent until proven guilty beyond a reasonable doubt. Because possible sanctions and consequences are extremely serious, the process to achieve those sanctions and consequences must be no less fair than for an adult. In my view, it is absolutely necessary that children ages 10 to 14 have an attorney, parent, or guardian present in order for interrogation by the police to occur.

As I look around in this room, I wonder how those who have a child or grandchild, ages 10 to 14, would feel if that child was arrested and questioned without that parent's knowledge, consent, or presence. I feel safe in speculating that you would not like it or approve of it. Good police work is not hampered by due process. Due process is critical to a judicial system if we

wish to achieve justice. It is extremely important we do not rush to find someone culpable nor rush to judgment.

Think for a moment of why sex with children is a crime. The answer is simple - it is for their protection. We know children can be manipulated and abused. Sex with a minor of less than 14 years of age is statutorily prohibited and severely punished in our state, even if the other party does not know the age of the child, and the child "consented." We do this because the child must be protected, and the child does not have the capacity to consent. Why should we then, for one moment, believe the child should not be protected during the course of a criminal interrogation which could result in detention for years and a lifelong record?

Children under the age of 14 cannot be tried as adults. As a society, we have made a commitment to the philosophy that rehabilitation is the appropriate manner in which to proceed. See, K.S.A. 38-1636. For children less than 14 years of age, the totality of the circumstances test, as set forth in State v. Young, 220 Kan. 541, should not apply. We can safely presume that a juvenile under the age of 14 simply runs too great a risk, when questioned, of not understanding or being intimidated by the authorities; therefore, the adverse consequences to our children far exceed the benefits arguably gained from allowing such a process to occur. By its very nature, the process of interrogation of a juvenile under the age of 14 appears to me to be a violation of our state and federal Constitutions. We cannot

legitimately argue that a juvenile under the age of 14 can voluntarily make incriminating statements absent a parent, guardian, or attorney.

Children are easily intimidated and confused. The police are authority figures. It is the job of the police to find the guilty party, and it is our job, as a civilized society, to ensure that we have rules that dictate how that police work is done. The requirements of HB 2717 do not adversely affect the good police investigator; it does, however, affect children in a positive and realistic way. It allows children a level of protection that assures their best interests are considered.

If we are going to continue to treat children as they are presently being treated in our juvenile court system, we must provide a level of protection commensurate with the risk they face. They must have counsel, guardian, or parents present if police interrogation is to occur.

In this country, we take great pride in our judicial process being fair and just. This bill helps make our Kansas juvenile justice system fair and just; to vote against this bill is to turn a blind eye toward the equal protection of children in our courts.

I respectfully request your favorable consideration of HB 2717, which stands for the proposition that equality of treatment in the criminal prosecution of our citizens mandates that children's rights be protected.

#4

American Civil Liberties Union of Kansas and Western Missouri

Wendy McFarland/Lobbyist (785) 233-9054 Jacob Montgomery/Student Intern

Testimony in Support of HB 2717 Concerning the Rights of Children & Parents March 16, 1998

Thank you for this opportunity to address an issue I care deeply about. My name is Jacob Montgomery and I appear before you today as a 17 year old student from Lawrence High School and a legislative intern for the American Civil Liberties Union.

Under current law, the Kansas criminal justice system fails to live up to its name. Children are asked to waive their rights to counsel: Children who are still riding bicycles to school, Children who still don costumes on Halloween to trick or treat, Children who still beg their moms for 75 cents each time the ice cream truck circles their block, Children who are told to be home before dark.

In Kansas, we actually expect these same children to understand that cooperating with a law enforcement officer might result in a great deal more than a sternly delivered "No TV for you tonight young man and up to your bedroom NOW!".

How did we ever think that a child could possibly understand what it meant to waive Miranda rights? As a seventeen year old I need to have my parents sign forms to let me rent videos from Dillons, but under current law a 10 year old is expected to sign away their constitutionally guaranteed rights without their parents guidance.

Under current law the Justice system hardly lives up to its name in the context of interrogating those 13 years of age and under. Children have a vague grasp of abstract concepts. They have difficulty processing complex questions that involve present and past tense. They cannot always distinguish between similar words like ask and tell. They cannot handle nor even understand subtle English usage like irony or sarcasm.

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Most importantly, children generally believe that adults always tell the truth and the sad truth of that innocent trust is that police are allowed to lie to get a confession, even from a child.

After a brief reading of Miranda Rights, children in this state are handed a piece of paper and asked to sign it without anyone present who would be looking out for their best interests.

Make no mistake, the interrogators are no friend to the child being questioned. The role of friendly neighborhood police officer is left outside the station doors when a confession is being sought.

I am not criticizing the role of the interrogator here, they are only doing their job but their job, in this one case, is not in the best interests of that child. There job is to get a confession almost any way they can.

It has been an oversight of Kansans for far too long in failing to insure that a child in these circumstances has a parent or attorney present who they can trust to tell them the truth...even if that truth sometimes means telling the child to remain silent.

Trained interrogators interrogate these children for hours to obtain "confessions" that all too often completely concur with the officers' theory of how things were supposed to have taken place.

As a Seventeen-year-old, my memories of early childhood are already quickly fading, and I suspect that some representatives here remember even less than I do. Try though, if you will, to put yourself in the position of a child in the custody of strangers without a parent present being asked the kinds of questions only their parents and trusted teachers had been allowed to ask before now.

Would you honestly understand the potential harm you invite upon yourself as you sign a piece of paper a friendly police officer has just requested of you? I believe you would not and for that reason I urge you to vote for passage of this bill.

To help us all understand who this bill truly protects, I have asked a friend of mine, Patty Beedles, to refresh our decaying memories.

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American Civil Liberties Union of Kansas and Western Missouri

Wendy McFarland/Lobbyist (785) 233-9054 Patty Beedles/Jr. Student Intern

March 16, 1998 Testimony in Support of HB 2717
Concerning the Rights of Children & Parents

Hello. My name is Patty Beedles and I am an eighth grade student at Lawrence Central Junior High school. I am also thirteen years old so I thought it would be very important for you to hear from someone this bill might help one day. I have never been arrested or questioned by the police and I hope I never will. I am not allowed to leave school unless my parents write me a note.

I am scared about what could happen to me if I was suspected of a crime. I could be taken from my school, arrested, interrogated, and imprisoned before even seeing my parents. Even if I did something wrong, I don't think this is right.

I also don't understand why people think that children my age and even younger understand what it means to waive my Miranda rights. Before I was asked to testify I had never heard of Miranda versus Arizona. I just knew the words from movies and TV shows and they really don't mean much to me or to any child.

"Anything you say can and will be used against you in a court of Law. You have the right to talk to a lawyer and have them present with you while you are being questioned. If you cannot hire a lawyer, the court will appoint one for you." Many adults don't even understand what that means.

My parents always told me to trust police officers. I was never supposed to speak with strangers, but police officers are always okay. If a police officer started telling me that I had done something wrong and I could not remember or understand what they were asking me about, I could end up saying things that were not true. I think that children my age would say anything to make a policeman happy, and kids years younger than me **definitely** would.

All this bill does is make it so that my parents or another adult who wants to protect me is in the room before these kinds of questions are asked. If I actually did something wrong, I don't see how my parents or a lawyer would make it impossible for the police to find out. That's what investigations are for.

As a representative of the children of Kansas who couldn't be here today, I ask you to pass House Bill 2717 because its good for children and its good for parents. Thank you.

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George S. Thompson, Jr., MD
Director, Menninger Community Service Office
234 S. Kansas Ave.
Topeka, KS 66603
785-232-7214

Testimony in Support of HB 2717

"Waivers of constitutional rights not only must be voluntary, but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences" (Brady v. United States, 1970).

Capacity To Understand

- Below age 11,
  - Children's thinking is concrete
  - Problems processing complex questions
  - Difficulty organizing the details of narratives
  - Still believe that adults speak the truth
- Adolescents 11-18 understanding tense + historial tense
  - Developing narrative skills
  - Developing time skills
  - Developing the ability to deal with complex negation
  - Developing the ability to understand long, complex questions
- Teens can be stuck in the school-age stage
  - Undereducated
  - Underparented
  - Underattached.
- Teens can regress to the school-age stage
  - Under adverse and anxiety producing circumstances
  - They don't think as well under pressure.
- Ferguson and Alan Charles: 81/86 waived their rights without understanding them fully.
- Manoogian: Changing or simplifying the wording of the Miranda statements did not make them easier to understand.
- Grisso: "The great majority of juveniles who are 14 years of age or younger were [found] to lack the competence to waive rights silence and counsel."

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George S. Thompson, Jr., MD
HB 2717
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Capacity To Decide

- No experience making serious decisions.

- Waiver of Miranda rights carries the risk of both irreversible consequences and the risk of serious harm.

- Children do not have the capacity to appreciate the nature, extent and probable consequences of the conduct consented to.
  - Undeveloped ability to reasoning about possibility
  - Difficulties in understanding time, causation, irreversibility.

Voluntariness

- "Juveniles, unlike adults, are always in some form of custody."
  - Have not made decisions completely on their own.
  - Learning to make one's own decisions usually takes years

- Young people see law enforcement officers as authority figures
  - Most children try to please or cooperate with adults in authority
  - Most children will waive Miranda rights to comply with an adult's request

- If a police officer asks a child to waive Miranda rights, that is by definition a coercive and suggestive act.

- Children will confess to things that they have not done if asked repeatedly
  - They will come to believe that the event actually did happen

CONCLUSION

- Children do not have the capacity to understand what their Miranda rights are and what they mean.
- Children do not have the cognitive capacity to decide to waive their rights.
- Children by definition are coerced into waiving their Miranda rights, if they are asked to do so by a law enforcement official in isolation from their parent.

- **Support HB 2717 to protect children from the consequences of decisions that they are not prepared to make.**

#7

Kansas Legislators, concerned citizens, and other guests:

Thank you for this offer of your time to listen to us so that we may be heard regarding the rights of our children in the state of Kansas:

Offering our children protection in unfamiliar territory is one of the greatest acts we can make for the future of Kansas. As a parent, an ethnic minority, with no college education and no legal training or education, the fear of one of my children entering our legal system is a daily worry. My kids aren't 'bad' and the don't run the streets at night, any more than your kids do. However, the difference between being the accused or the accuser makes the difference in whether our children will have a future; and anyone can become the accused. Just like adults.

Let's forget us adults. We know what were doing. Right? I mean that first time you are ever arrested for anything, whether the charge is correct or its a mistake. You know exactly what to say or do, or more importantly what NOT to say or do. You're comfortable with your own knowledge of your Miranda rights and the consequences of you choosing to waive those rights? Right?

Ok, then what about your children? What about your teenagers? Are you as comfortable with their knowledge of their Miranda rights and the consequences of them opting to waive those rights? Think they won't ever be arrested for anything? I pray they won't. Remember though that your child, your grandchild, niece, nephew, any family member can be charged with any crime by anyone. That gets them into the system. The hard part is getting them out of the system.

And one more thing - let's get over the idea that only bad kids get in trouble, or that only kids with bad parents get in trouble. Let's get real here. There is nothing I can teach my child that TV can't "unteach" them, or the movies can't "unteach" team. There is nothing I can do for my child that the child whose parents aren't ever around and won't teach them can't undo. And we all know the older our children get, the tougher it gets - for them and for us.

One of the questions posed at the first hearing was something like "did the fact that police officers are permitted to lie to your child during an interrogation have any influence on your testimony here?" I thought about this single question a hundred times. I wondered about you. Are you willing to let your child go into an interrogation where the law permits police officers to "lie" and/or manipulate facts so as to get a confession or story of events that could implement them, or you? Think about this very seriously.

The adoption of this law doesn't protect criminals. The truth is the real 'criminals' that I've heard police officers refer to are either too smart to get caught, or they are so

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Attachment 7

comfortable with the system that they are already ready for you. Police officers know who they are and it's no secret on the street.

This law is a small step in the protection of our children, yours and mine. It is a small procedure for our police officer - a phone call, maybe two - that will protect them as well. There has to be comfort in knowing that while performing the duties of your job you really did try to serve and protect the most vulnerable and most valuable portion of our society. It is a small procedure to ensure that once a child who is accused of a crime enters the court room, he will have been taken care of by the law at least as well as we take care of the adults. Is this too much to ask?

I am asking you to adopt this legislature and make a law for the protection of our children. Their rights should not stop when they enter the legal system of Kansas.

Thank you.
Nakita Vance
830 W. Munnell
Wichita, KS 67213
316-267-8353
316-383-7838 wk

#8

My name is Cathy Brewer. I have been a legal secretary for almost eleven years, am a mother of 4 children and 6 grandchildren. I have lived in Kansas for 25 years. I appreciate this opportunity once again to testify on behalf of HB 2717.

When I spoke a few weeks ago before the subcommittee, I expressed my concerns about children under 14 years of age being mirandized and interrogated without the presence or consent of a parent or guardian.

I have attached a listing of several states which already have some form of case law or statute in place regarding waiver of rights by juveniles and parental notification.

As some of the comments that I heard from the opponents of this bill were that such a law could not work in Kansas; it would make law enforcers' jobs very difficult, having to contact a parent or guardian; or that we would be letting criminals go free-- I contacted one of the states that already had legislation in place, to see how it has worked for them.

I chose Iowa, as it appeared to be a state similar to Kansas, mid-western, with the same family and Christian values. I spoke with John Robertson, an attorney in Iowa City, whose practice is primarily juvenile law. Mr. Robertson was also originally from Kansas, attending law school at KU. I explained to him about the bill that we were trying to pass in our legislature and that I understood that Iowa already had such a law regarding waiver of rights of their juveniles. Mr. Robertson advised me that they have had a law in place now for almost ten years. He also informed me that Iowa is very similar to Kansas, not only because of family values, but also in their court / judicial procedures. The bill we are trying to pass in Kansas pertains only to juvenile offenders under the age of 14, but in Iowa, a juvenile under 16 years of age cannot waive their rights without the consent of a parent or guardian.

I asked Mr. Robertson what prompted Iowa to pass legislation that would require parental notification and consent and his answer echoed the exact same concerns that Kansans have expressed. Iowa had the same opposition by their law enforcement, but their concerns were totally unfounded. Mr. Robertson advised me that since this law has been in place in Iowa, there has been absolutely no impact on law enforcement officers' ability to perform their duties in apprehending juvenile offenders. The law simply forces them to take an additional step by requiring them to notify the parents or guardian when they take a juvenile into custody.

What we must remember is that even if a juvenile does not give a statement to a police officer, he or she can still be charged with the crime, just like an adult if they were arrested and exercised their right to remain silent. The juvenile will still go before a judge who will ultimately have the responsibility of determining innocence or guilt. Therefore, requiring the

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consent of a parent or guardian before a child can waive their rights and be interrogated by an officer is not going to "let criminals go free". This law is simply an "extra step" that our law enforcement officers will be required to take when they are dealing with our children. If Iowa and many other states can have such a law, and it can work effectively for them ---then so can Kansas.

As everyone is aware, a decision was reached on March 13, 1998 regarding the case *In the Matter of B.M.B.* The Supreme Court overturned the conviction of a Wichita juvenile in a case that inspired this legislation and ruled that a "juvenile under 14 years of age must be given an opportunity to consult with his or her parent, guardian or attorney as to whether he or she will waive his or her rights to an attorney and against self-incrimination. Both the parent and juvenile shall be advised of the juvenile's right to an attorney and to remain silent. Absent such warning and consultation, a statement or confession cannot be used against the juvenile at a subsequent hearing or trial."

I would urge the committee to approve HB 2717, but with necessary changes that will reflect the constitutional concerns of the Supreme Court.

PROPOSED CHANGES TO HB 2717

I would like to propose the following changes to HB 2717 indicated by underlining and italics: On page two, line 21, paragraph (3)(A), "When any law enforcement officer takes an alleged juvenile offender into custody or arrests an alleged juvenile offender, the juvenile *and a parent, guardian or attorney, if the juvenile is less than 14 years of age* shall be advised that..."

Line 32, paragraph (B) would read as follows: (areas omitted indicating strikeouts)

"When the juvenile is less than 14 years of age, no *statement* ~~in-custody or arrest admission or confession resulting from interrogation~~ may be admitted into evidence unless the ~~confession or admission~~ *statement* was made in the presence of the juvenile's parents, guardian or attorney."

On line 40, paragraph (C), "When a parent or guardian is the alleged victim of the crime under investigation and the juvenile is less than 14 years of age, no ~~in-custody or arrest admission or confession~~ *statement* may be admitted into evidence unless the ~~confession or admission~~ *statement* was made in the presence of a parent or guardian who is not involved in the investigation of the crime..."

(c) *Procedure*. (1) When any law enforcement officer takes an alleged juvenile offender into custody, the juvenile shall be taken without unnecessary delay to an intake and assessment worker if an intake and assessment program exists in the jurisdiction, or before the court for proceedings in accordance with this code or, if the court is not open for the regular conduct of business, to a court services officer, a juvenile intake and assessment worker, a juvenile detention facility or youth residential facility which the court or the commissioner shall have designated. The officer shall not take the juvenile to a juvenile detention facility unless the juvenile meets one or more of the criteria listed in K.S.A. 38-1640, and amendments thereto. Even if the juvenile meets one or more of such criteria, the officer shall first consider whether taking the juvenile to an available nonsecure facility is more appropriate.

(2) It shall be the duty of the officer to furnish the county or district attorney or the juvenile intake and assessment worker if the officer has delivered such juvenile to the worker, with all of the information in the possession of the officer pertaining to the juvenile; the juvenile's parents, or other persons interested in or likely to be interested in the juvenile; and all other facts and circumstances which caused the juvenile to be arrested or taken into custody.

(3) (A) When any law enforcement officer takes an alleged juvenile offender into custody or arrests an alleged juvenile offender, the juvenile shall be advised that:

(i) The juvenile has a right to remain silent;

(ii) any statement the juvenile does make can be and may be used against the juvenile;

(iii) the juvenile has a right to have a parent or guardian present during questioning; and

(iv) the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

(B) When the juvenile is less than 14 years of age, no in-custody or arrest admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parents, guardian or attorney. It shall be the duty of the facility where the juvenile has been delivered to make a reasonable effort to contact the parent or guardian immediately upon such juvenile's arrival unless such parent or guardian is the alleged victim of the crime under investigation.

(C) When a parent or guardian is the alleged victim of the crime under investigation and the juvenile is less than 14 years of age, no in-custody or arrest admission or confession may be admitted into evidence unless the confession or admission was made in the presence of a parent

Massachusetts

Supreme Judicial Court
Commonweath v. MacNeil
339 Mass 71, 76-77, 502 N E 2nd 938 942 (1987)

"We conclude that for the Commonwealth successfully to demonstrate a knowing and intelligent waiver by a juvenile, in most cases it should show that a parent or an interested adult was present understood the warnings, and had the opportunity to explain his rights to the juvenile so the juvenile understands the significance of waiver of these rights. For the purpose of obtaining the waiver in the case of juveniles who are under the age of fourteen, we conclude that no waiver can be effective without added protection."

Missouri and New York

Appellate Court
In re K.W.B.
500 S W 2d 275 (MO App. 1973)
Matter of Aaron D.
30 App. Div. 2d 183, 290 NYS 2d 935 (1968)

The appellate court found that the interrogation of any juvenile requires the presence of his or her parent.

Pennsylvania, Louisiana, Vermont

Commonwealth v. Smith
472 Pa 492, 372 A.2d 707 (1977)
State in Interest of D.M.O.
LA. 359 So 2d 586 (1978)
State v. Piper
Vt, 468 A.2d 554 (1983)

In order for prosecutors in their states to meet the burden of demonstrating that a juvenile's waiver was made knowingly and intelligently, they must affirmatively show that the juvenile engaged in meaningful consultation with an attorney or informed parent or guardian before he waived his privilege against self-incrimination.

Colorado and North Carolina

Colo Rev. Stat. Sec 19-2-102(3) (e) (I)
N.C. Gen. Stat. Sec 7A-595(a) (3)

The "interested adult role" has been specifically adopted by statute in these two states.

Indiana, Georgia, Florida

Lewis v. State
259 Ind. 431 288 N.E. 2d 138 (1972)
Freeman v. Wilcox
119 GA. App 325, 167 S.E. 2d 163 (1969)
J.E.S. v. State
Fla. App., 366 So.2d 538 (1979)

The administering of Miranda Warnings to a juvenile, without providing an opportunity to consult with an informed adult concerned primarily with the interest of the juvenile, is inadequate per se to create a knowing and voluntary waiver.

Maine

State v. Nicholas
Me. 444 A 2d 373 (1982)

The court found that a 14 year old, with an eighth-grade education, and limited prior experience with the criminal justice system was unable to understand Miranda warnings.

West Virginia

Code Section 49-5-1 (d) prohibits admission of statements of a child younger than 16 unless made in the presence of counsel or a parent or custodian.

Iowa

Code Section 232 permits a child less than 16 years of age to waive counsel prior to police questioning only with the written consent of the child's parents, guardian or legal custodian.

Montana

Montana Youth Court Act 1997
Section 41-5-331 states that parents, guardian or legal custodian of youth should be immediately notified when a youth is taken into custody. If they cannot be found with diligent efforts, then a close relative or friend chosen by youth can be notified. A youth may waive his rights only if he is 16 years or older. If a youth under 16 and his parents or guardian do not agree, the youth may make an effective waiver only with the advice of counsel.

#9

My name is Rev. Wanda McDaniels. I am the 1st Vice President of the Wichita NAACP, member of the State NAACP Political Action, mother, grandmother and children's rights activist.

I am here today to express my support for HB 2717.

Even though our law enforcement will argue that it is their policy to ask a younger child if they want their parents notified or present, I believe most of you will agree that oftentimes when children think they may be in trouble for something, they do not want their parents to know about it. They really have no concept of what kind of trouble they really are in when they are taken into custody for an alleged wrongdoing. A child under 14 years of age certainly has no idea of the consequences or legal ramifications of waiving their right to remain silent and giving a statement to a police officer.

There are so many other states in this country that have a statute or case law which restricts law enforcement from allowing children to waive their rights and give a statement without presence and consent of a parent or guardian.

In Kansas we have had a case law that has been used now for several years regarding waiver of rights with juveniles, but this case law serves to allow the mirandizing and interrogation of our youth without parental involvement, not to protect our children from possible self incrimination.

In 1974, a sixteen year old young man named Michael Young was arrested for robbery and murder. He was read the miranda rights. He waived his rights, and gave a statement to the police detectives. Michael admitted his involvement in the criminal activities that lead to a person's death. The trial court "admitted the confession finding Michael was fully competent, understood what he was doing, and made the statement". In March of 1975 he was found guilty of first degree murder and appealed his case to the Supreme Court.

In this particular case, the Supreme Court found that a confession of a juvenile is admissible, but gave certain conditions for it to be so. The age of the juvenile, length of questioning, education, juvenile's prior experience with the police, and mental state are factors to be considered in determining the voluntariness and admissibility of a juvenile's confession.

Mr. Young lost his appeal because he was 16 years old at the time he committed the crime, and as he had already broken the law many times previously, back in September of 1974 the court had already deemed him as a "delinquent child not amenable to the care, treatment and training program available through the facilities of the juvenile court..." In other words, because Mr. Young had been in trouble so many times, the juvenile system was not going to

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handle him anymore. On that date in 1974, he became certified as an adult, and was to be considered as an adult in any future legal problems he sustained.

I believe that in this particular case, the Supreme Court ruling was appropriate. This was a 16 year old who had an extensive criminal record, and was found guilty of first degree murder.

What I don't believe is fair is to use this case to justify the mirandizing and interrogation of all of our juvenile offenders, regardless of their age. Our recent Supreme Court justices must agree also to this fact, as they have indicated in their decision of March 13, 1998, *In The Matter of B.M.B.,* page 21, that "We do not overrule the holding in *Young* but limit its application to a juvenile 14 years of age and older."

The people of Kansas believe that parents should be present when children under 14 are taken into custody – and our highest court in this state, the Supreme Court of Kansas believe that a child under 14 should not give a statement or confession without first consulting with their parent, guardian or attorney .....I urge you, as representatives of this state and its people to support the passage of HB 2717.

study indicates that a large percentage of juveniles are incapable of knowingly and intelligently waiving constitutional rights. In any event, it is the general policy of our law to protect all minors from the possible consequences of immaturity."

We find the rationale in the above cases to be persuasive. We are further persuaded by what occurred in the present case. For all intents and purposes, the State and trial court treated B.M.B. as if he were an adult or at least a much older teenager. In viewing the record, it is clear that the trial court gave only lip service to the *Young* factors and ignored whether in fact B.M.B. comprehended his rights or his situation.

We cannot ignore the immaturity and inexperience of a child under 14 years of age and the obvious disadvantage such a child has in confronting a custodial police interrogation. In such a case, we conclude that the totality of the circumstances is not sufficient to ensure that the child makes an intelligent and knowing waiver of his rights.

In Kansas, we have long recognized that under the law, a juvenile is not to be treated the same as an adult. The Juvenile Offenders Code (Code) is to be "liberally construed to the end that each juvenile coming within its provisions shall receive the care, custody, guidance, control and discipline, preferably in the juvenile's own home, as will best serve the juvenile's rehabilitation and the protection of society." K.S.A. 38-1601. Proceedings under the Code are considered civil proceedings and not criminal. The State acts as *parens patriae* for the best interests and welfare of the child. A per se rule of exclusion as to statements made by a juvenile under 14 years of age is consistent with the legislature's commitment to rehabilitation of the juvenile and in providing that juveniles under 14 years of age cannot be prosecuted as adults. See K.S.A. 38-1636. We do not overrule the holding in *Young* but limit its application to a juvenile 14 years of age and older.

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#10

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1) LAW MAKERS

2) INFLUENCE / FUTURE

3) RIGHT DECISIONS

4) DEFINING LAW FOR POSTERITY

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