

## 2.4 Right Against Self-Incrimination

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## 2.4 Right Against Self-Incrimination

This section briefly reviews a juvenile’s right against self-incrimination. For a more in-depth review, see *infra* § 11.3, Bases for Motions to Suppress Statement or Admission of Juvenile, and § 11.4, Case Law: Motions to Suppress In-Custody Statements of Juveniles.

### A. Constitutional Right

The constitutional right against self-incrimination guaranteed by the Fifth Amendment has been held applicable to juvenile proceedings by the U.S. Supreme Court. *In re Gault*, 387 U.S. 1, 55 (1967). A juvenile cannot be compelled to give information that could later be used against the juvenile in an adjudicatory hearing and cannot be compelled to testify. *Id.*

### B. Statutory Rights

A juvenile in custody is entitled to statutory protections that include and go beyond the requirements of *Miranda* warnings. G.S. 7B-2101. The Juvenile Code provides that any juvenile in custody must be advised before questioning of the following: the right to remain silent; that any statement the juvenile chooses to make may be used against the juvenile; that the juvenile has the right to have a parent, guardian, or custodian present during the questioning; and that the juvenile has a right to an attorney and that one will be appointed on request. G.S. 7B-2101(a); see *infra* § 11.3, Bases for Motions to Suppress Statement or Admission of Juvenile.

Additionally, a juvenile under 16 years of age cannot waive the presence of a parent, guardian, or custodian during interrogation. G.S. 7B-2101(b). If an attorney is not present, interrogating officers must also advise the juvenile’s parent, guardian, or custodian of the juvenile’s rights. However, the juvenile’s rights may not be waived by the juvenile’s parent, guardian, or custodian. *Id.*

If the requirements of G.S. 7B-2101(b) are satisfied, the juvenile may waive the right against self-incrimination. *State v. Flowers*, 128 N.C. App. 697, 701-02 (1998). The State bears the burden of proving by a preponderance of the evidence that the waiver is knowing and intelligent. *Id.* The court must then determine, based on the “specific facts and circumstances of each case, including background, experience, and conduct” of the juvenile,” whether the waiver was knowing and intelligent. *State v. Johnson*, 136 N.C. App. 683, 693 (2000).

**C. Admission to Juvenile Court Counselor at Intake**

A statement made by the juvenile to the juvenile court counselor during the intake process is not admissible before the dispositional hearing. G.S. 7B-2408. There is no provision for the juvenile's waiver of this protection. Counsel should object to admission at the adjudicatory hearing of any inculpatory statements made by the juvenile to the juvenile court counselor during the intake process.