

2021 House Bill 1140:

Concerning juvenile access to attorneys when
contacted by law enforcement



In theory –

The Constitution Protects the Right to Remain Silent and the Right to Counsel

MIRANDA WARNING

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
3. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING, IF YOU WISH.
5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

WAIVER

DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU?
HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?

In practice –

Youth in Washington State Tell a Different Story:

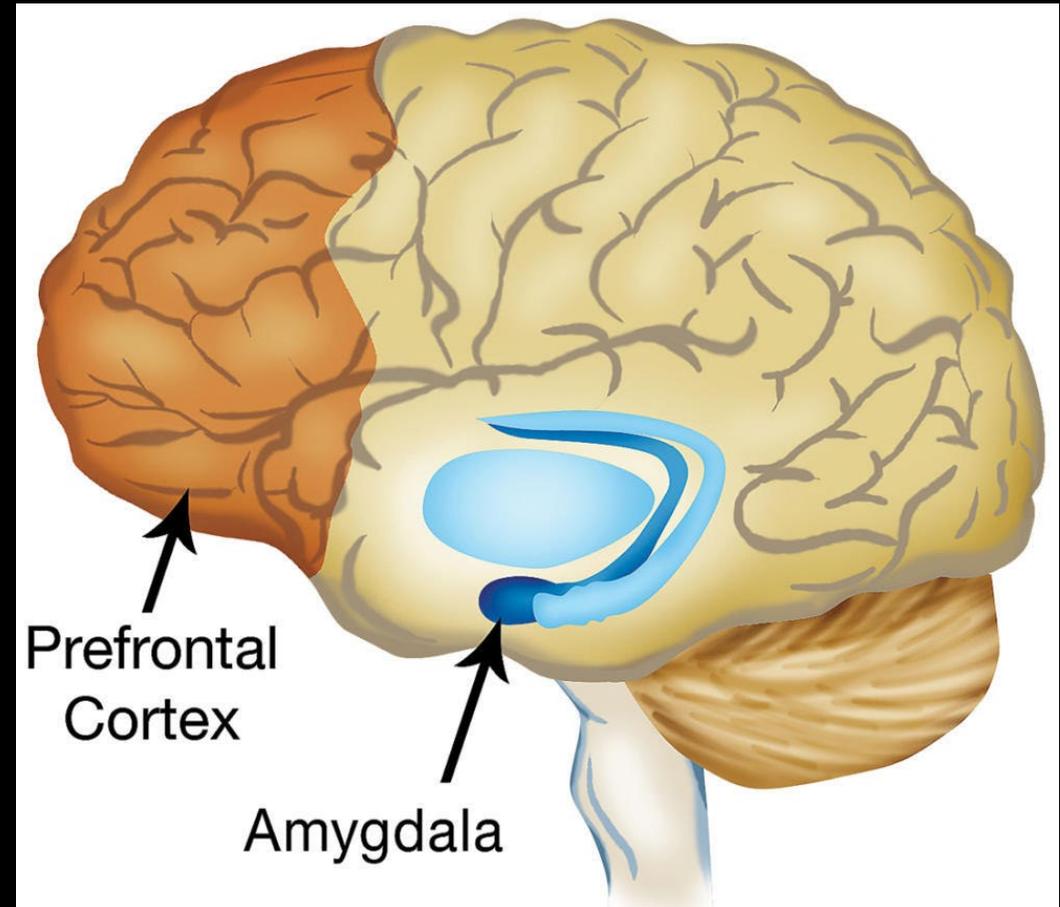
“They try pressuring you to talking to them and the next thing you know you’re saying yes to something you didn’t do.”

Right to counsel is critical for young people:

- Youth often do not **understand** legal rights and protections
- **Power dynamics are coercive and** limit meaningful consent
- **Racial bias** undermines trust between youth and police
- **Procedural justice** improves public safety
- Existing **case law** fails to protect youth

1. Lack of understanding

- Adolescent brain science
- *Miranda* is confusing
- Knowing whether you can refuse police request to search is confusing



Power dynamics

- Less than 10 percent of youth suspected of committing a crime assert their *Miranda* rights when stopped by the police.
- Children questioned by adults and authority figures are more likely to feel pressure to respond.
- Police interrogation is inherently coercive.
- Police can lie to youth during interrogation with impunity.

“I...used a ruse by telling him...”

I spoke with the first male who was later identified as [REDACTED]. I advised [REDACTED] of his Miranda Rights from a department issued code book since he was not free to leave and I was questioning him. He stated yes to understanding my questions and yes to answering them.

[REDACTED] said he was coming from his friend [REDACTED]'s house and that he was going to [REDACTED]'s house to pick up his school binder. I asked [REDACTED] who [REDACTED] was and he said he did not know his last name. I asked him who [REDACTED] was and he said it was the other kid he was with and motioned over to the individual Ofc Jones was talking to. I asked [REDACTED] many times about breaking into an apartment in different ways and he denied it.

I then spoke to [REDACTED] and used a ruse by telling him [REDACTED] said that it was all [REDACTED]'s idea and that [REDACTED] was the master mind of it all. At first [REDACTED] like [REDACTED] denied it all, but after they were both positively identified by the victim [REDACTED] said he wanted to give his side of the story. I told him that Ofc Ross would take his statement and that it would be in his best interest to tell the truth.

Structural Racism

- Nationally, police officers are more likely to arrest Black youth than white youth:
 - In 2016, Black youth accounted for 15% of U.S. children yet made up 35% of juvenile arrests that year.

In King county, for example, police stop Youth of Color (BIPOC) at a disproportionate rate

- In 2012, the arrest rate for African Americans in King County was 1 in 38 in 2010, while the arrest rate for white suspects was 1 in 200.
- In 2019, approximately 20 percent of the youth referred to the juvenile legal system were referred by SPD and 22 percent of the filings were from SPD referrals.
- 72.4% of the youth charged in the juvenile legal system in 2019 were Black, Indigenous, and/or People of Color.
- In 2019, 86.1% of the youth incarcerated in King County were Black, Indigenous, and/or People of Color.

HB 1140

Sponsored by Rep. Jesse Johnson

Signed into law on May 18

Effective date is 1/1/22

HB 1140 builds on work in California and San Francisco and makes our community safer

“The [Jeff Adachi Youth Rights Ordinance], now fully implemented in San Francisco, makes our community safer and has not diminished my office’s ability to prosecute serious and violent crimes.”

– Chesa Boudin, District Attorney, San Francisco

Procedural Justice

- Implementing HB 1140 will reduce racial bias and lead to safer communities
- Youth are more likely to comply with the legal system when they feel the system and its actors are not violating their constitutional protections.
- Patricia Lee, Managing Attorney of the Juvenile Unit of San Francisco Public Defender's Office, states that since the Jeff Adachi Youth Rights Ordinance passed – “ I believe that my clients distrust the system less because they understand their rights and how to exercise them.”

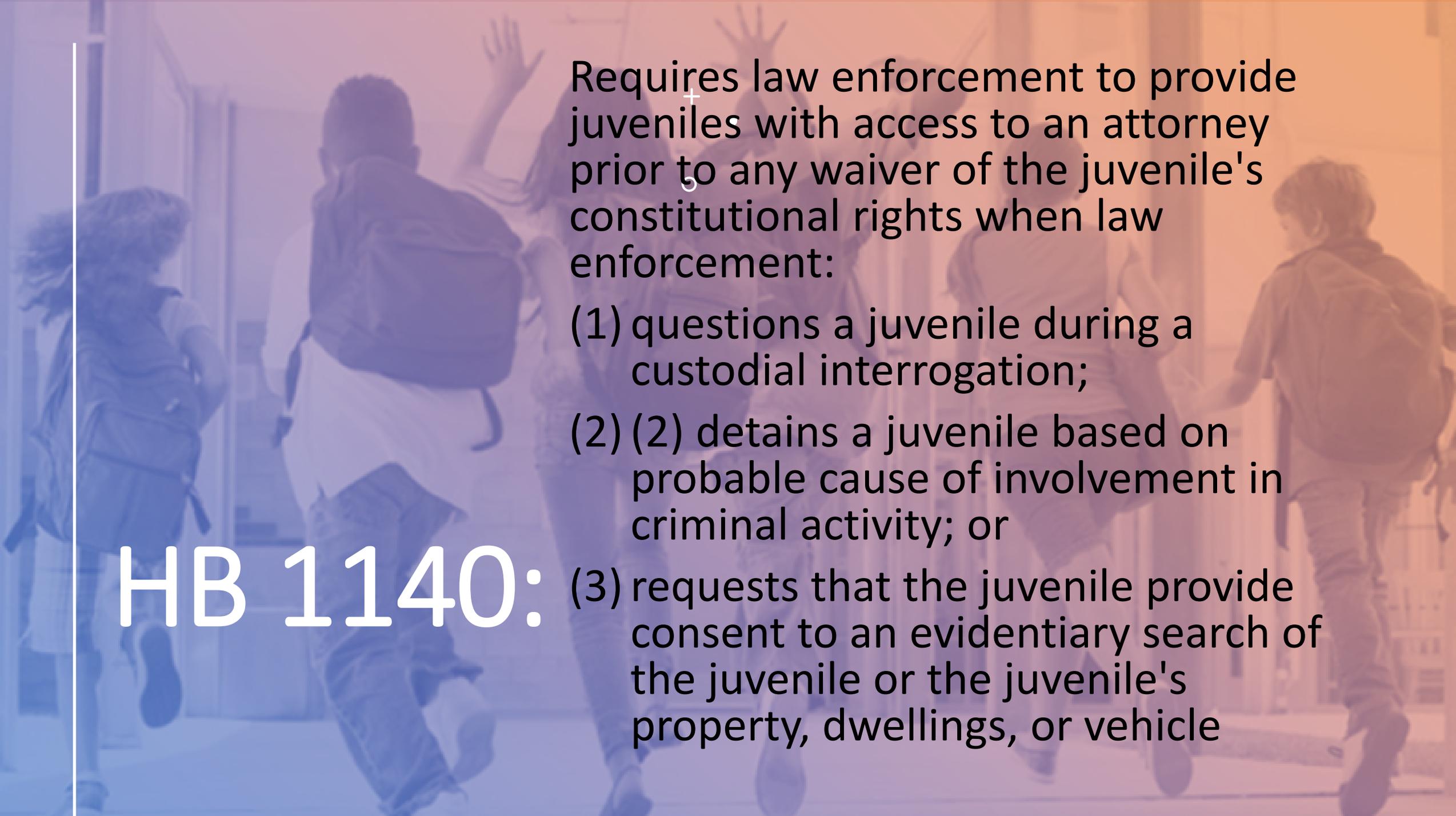
“You can’t erode what
doesn’t exist”

“Existing case law and constitutional provisions do not adequately protect the rights of youth, especially those youth experiencing poverty or who are Black, Indigenous and Youth That anachronistic case law largely ignores what the science tells us about developing brains and pretends that young people and law enforcement are on equal footing in any interaction.

- Chesa Boudin, District Attorney, San Francisco

Current law falls short of protecting youth

- Even when the law requires courts to consider a young person's age, in practice courts rarely identify age as a relevant factor.
- “Existing case law and constitutional provisions do not adequately protect the rights of youth, especially those youth experiencing poverty or who are Black, Indigenous and Youth That anachronistic case law largely ignores what the science tells us about developing brains and pretends that young people and law enforcement are on equal footing in any interaction. - Chesa Boudin, District Attorney, San Francisco
- The “Jeff Adachi Youth Rights Ordinance” rectifies this problem by considering both the brain science and the power dynamics between youth and law enforcement interaction. The Ordinance makes young people's constitutional rights meaningful by connecting them to a lawyer who can help them understand these rights. - Chesa Boudin



Requires law enforcement to provide juveniles with access to an attorney prior to any waiver of the juvenile's constitutional rights when law enforcement:

(1) questions a juvenile during a custodial interrogation;

(2) (2) detains a juvenile based on probable cause of involvement in criminal activity; or

(3) requests that the juvenile provide consent to an evidentiary search of the juvenile or the juvenile's property, dwellings, or vehicle

HB 1140:

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- Does not apply when officers want to ask questions during, for example, “Terry stops” or welfare checks.
- Provides that the consultation with an attorney may not be waived.
- Establishes that statements made by a juvenile during or after the foregoing scenarios are inadmissible, unless: (1) the juvenile is provided with access to an attorney for consultation and the juvenile makes a valid waiver of the juvenile's rights; (2) the statement is for impeachment purposes; or (3) the statement was made spontaneously.
- Establishes exceptions to the attorney-consultation requirement if law enforcement believes the juvenile is a victim of trafficking (however, any information obtained from the juvenile by law enforcement pursuant to this subsection cannot be used in any prosecution of that juvenile), or believes the information sought is necessary to protect an individual's life from an imminent threat.

What the Ordinance does do:

- Provides youth with access to a public defender.
- Provides 'on call' legal representation 24/7 that will be implemented by the State Office of Public Defense
- Requires exclusion of evidence obtained in violation of the statute

“The police are really scary.
I wish I had known my rights.”

Sources

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