



February 14, 2019

To: Chairman Lathrop and Members of the Judiciary Committee
From: Juliet Summers, Policy Coordinator at Voices for Children in Nebraska
Re: **LB 391 – Change duties of peace officers taking juveniles into custody or interrogating juveniles and prohibit use of statements taken in violation of the rights of a juvenile**

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At every stage in our justice system, we should ensure that youth are held accountable with safeguards in place to ensure that our response is measured and appropriate. Voices for Children in Nebraska supports LB 391, because it will provide an age-appropriate protection for youth when they come into contact with law enforcement. By requiring developmentally appropriate language in giving *Miranda* warnings to minors, and creating a new *Miranda* protection when a child asks for a parent or guardian, LB 391 will ensure that any child's waiver of *Miranda* rights is more likely to be made knowingly and intelligently. It will simultaneously ensure that parents or guardians are able to know and respond immediately when a child becomes involved with a criminal investigation.

We are all, children included, entitled under the Constitution to a right against self-incrimination. The required reading of rights under *Miranda v. Arizona*¹ is intended to balance the government's interest in investigating crimes and pursuing confessions, with the citizen's interest in understanding and accessing his or her constitutional protections. A custodial interrogation, by its nature, can be coercive – particularly if the individual under interrogation is a child. Children may be more likely to waive their rights without true knowledge or understanding of either what those rights mean, or what the consequences might be.

Worse, children are substantially more likely to confess falsely to crimes they did not commit. Studies of exonerations have found that though 13% of adult exonerations involved a false confession, 43% of juvenile cases did. The younger the child, the more likely the false confession: one study found that of all juvenile wrongful convictions, 69% of children age 12-15 falsely confessed, compared to 25% of youth age 16 and 17.² Generally, the younger the child, the more likely he or she is to accept responsibility for an act he or she did not commit.³ Desiring to please, or desiring to leave, the child may be willing to just "go along with" the interrogator, believing that agreement will end the interrogation sooner and make it all go away.

Individuals who are unfamiliar with our justice system are often surprised to discover that police may interrogate a child without a parent's permission or even knowledge. They may not realize that custodial interrogations can go on for hours, without break or contact with a trusted adult. As a parent, if I were to someday pick up one of my children from school to discover they had been interrogated without my knowledge or consent, I would be livid. LB 391 will fix this by requiring notice.

¹ 384 U.S. 436 (1966)

² Steven A. Drizin. *Interrogation Gone Bad: Juvenile False Confessions in the post-DNA Age*. Northwestern University. Available at <https://www.nij.gov/topics/courts/indigent-defense/documents/drizin.pdf>

³*Id.*

Voices for Children is strongly supportive of the provision that makes a child's request for a parent, guardian, custodian or other relative parallel an invocation of the *Miranda* right to counsel. In *Edwards v. Arizona*⁴, the U.S. Supreme Court held that after a suspect has invoked his *Miranda* right to legal counsel, a valid waiver of that right cannot be established until the suspect has had the opportunity to consult with counsel. Essentially, a suspect can't knowingly and intelligently waive a right he has already indicated he needs help to understand. For a child, who is even less likely to understand the implications of a custodial interrogation, asking for a parent or other trusted adult to be present mirrors an adult's request for an attorney. The child is saying "I need help to understand what is happening here and what I should do", and under LB 391, interrogation would cease until that help can arrive.

For all these reasons, we thank Senator Hansen for bringing LB 391, and thank the Committee for your time and consideration. We respectfully urge you to advance it.

⁴ 451 U.S. 477 (1981)