

Michigan Law Review

Volume 80 | Issue 4

1982

Juveniles' Waiver of Rights: Legal and Psychological Competence

Michigan Law Review

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Recommended Citation

Michigan Law Review, *Juveniles' Waiver of Rights: Legal and Psychological Competence*, 80 MICH. L. REV. 820 (1982).

Available at: <https://repository.law.umich.edu/mlr/vol80/iss4/36>

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JUVENILES' WAIVER OF RIGHTS: LEGAL AND PSYCHOLOGICAL COMPETENCE. By *Thomas Grisso*. New York: Plenum Press. 1981. Pp. xiii, 295. \$32.50.

Since *In re Gault*,¹ both juveniles who are accused of offenses that "may result in commitment to an institution in which . . . [their] freedom is curtailed" and their parents "must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child."² Such juveniles, *Gault* held, must also be advised of their fifth amendment right to refuse to answer questions posed by legal authorities.³ Although *Gault* applied only to formal delinquency hearings, "almost all post-*Gault* courts addressing the issue concluded that the rights to silence and counsel applied at preadjudicatory stages for juveniles just as for adults" (p. 7). Like the rights of adult defendants that are protected by *Miranda v. Arizona*,⁴ those guaranteed by *Gault* may be forfeited if they are "voluntarily, knowingly, and intelligently"⁵ waived. The *Miranda* waiver standard, however, is sometimes difficult to apply to juveniles, who may be too immature to satisfy the test. Most courts,

1. 387 U.S. 1 (1967).

2. 387 U.S. at 41.

3. 387 U.S. at 55.

4. 384 U.S. 436 (1966).

5. 384 U.S. at 444.

recognizing this problem, look to the "totality of circumstances" when assessing the validity of juveniles' waiver of rights.

Grisso's book, which consists of a series of studies involving different aspects of juveniles' competence to waive their rights, continues the efforts of some courts⁶ to examine the extent to which waivers may be valid and to discover what considerations are relevant to the "totality of circumstances" test. Several of the studies attempted to evaluate the relationships between juveniles' characteristics and knowledge of their rights. Among the factors that Grisso considered are I.Q., race, socioeconomic status, and number of prior felony convictions. He finds that age and I.Q. affect juveniles' comprehension of their rights most significantly, and concludes that these factors should bear heavily on the validity of waivers (p. 203-04). Judges and juvenile defense lawyers should find studies of this sort particularly useful.

Perhaps the most interesting of Grisso's studies involves the distinction between juveniles' knowledge of the rights to silence and counsel and their understanding of the functions of these rights. This distinction is crucial: Unless juveniles understand their rights, they cannot "voluntarily, knowingly, and intelligently" waive or assert them (p. 109). To determine whether the rights were understood, Grisso measured juveniles' comprehension of the role of the police in interrogation, the function of attorneys, and the significance of the right to remain silent. His study reveals that most juveniles do not fully comprehend the safeguards that *Gault* affords them. The level of understanding among juveniles, particularly among those with an I.Q. below ninety, was significantly lower than among adults (p. 128).⁷

The juveniles' misunderstandings fell into two main categories. Many of the youths had grave misperceptions concerning the role of counsel. One third of the juveniles with few or no prior felony referrals believed that attorneys would defend only the innocent. If they were guilty, this group believed, their lawyer's role was to aid the court in disposing of the case (p. 120). Grisso argues that a waiver of the right to counsel by a juvenile who harbored this belief should not be valid. He suggests, moreover, that defense attorneys may be able to ameliorate this problem partly by informing juveniles about their roles before police investigations (p. 129).

Juveniles also significantly misunderstood the fifth amendment right against self-incrimination. Many of the juveniles whom Grisso studied believed, for example, that the police could try to convince

6. See, e.g., *West v. United States*, 399 F.2d 467 (5th Cir. 1968).

7. One exception to this finding involves juveniles who have been referred for felony charges three or more times in the past. These juveniles had a level of understanding equal to that of the average adult nonoffender in the study. P. 128.

them to waive this right. And a majority believed that the right to remain silent was only temporary; the judge, they thought, could simply revoke it at will. Waivers made on the basis of this misconception, Grisso argues, should also not be accepted (p. 129).

Despite his thorough and extensive research, Grisso's recommendations for solving the problem of invalid waivers are limited. He effectively criticizes "traditional" approaches to juvenile reform, but presents only two poorly developed alternatives. He suggests first that courts should provide a blanket exclusion of confessions or mandatory counsel for those juveniles who are least competent to waive their rights (p. 202).⁸ Grisso acknowledges, as he must, that courts have traditionally rejected blanket exclusions, but argues that they may be more receptive to his proposal since it involves only a specific group of juveniles. He also suggests that judges should use his research results to weigh the competence of juveniles to waive their rights (p. 203-05). Because judges must deal with individual juveniles and not with statistics, however, it is not clear whether Grisso's studies will provide substantial assistance.

Although *Juveniles' Waiver of Rights* does not present a comprehensive proposal for reform, it does offer significant insights to those interested in the protection of the rights of juveniles. Grisso's well-designed studies plainly reveal the incompetence of many juveniles to waive their rights and, more importantly, pinpoint specific factors that correlate with this incompetence. If judges and advocates take his suggestions and use this research to effectuate more rational decision-making, Grisso's contribution could be immense.

8. The most vulnerable juveniles were 14 years of age or younger and 15-16 year olds with I.Q. scores of 80 or below. P. 202-03.