

RULE 3. Waiver of Rights

(A) A child's right to be represented by counsel may not be waived in the following circumstances:

(1) at a hearing conducted pursuant to Juv.R. 30;

(2) when a serious youthful offender dispositional sentence has been requested; or

(3) when there is a conflict or disagreement between the child and the parent, guardian, or custodian; or if the parent, guardian, or custodian requests that the child be removed from the home.

(B) If a child is facing the potential loss of liberty, the child shall be informed on the record of the child's right to counsel and the disadvantages of self-representation.

(C) If a child is charged with a felony offense, the court shall not allow any waiver of counsel unless the child has met privately with an attorney to discuss the child's right to counsel and the disadvantages of self-representation.

(D) Any waiver of the right to counsel shall be made in open court, recorded, and in writing. In determining whether a child has knowingly, intelligently, and voluntarily waived the right to counsel, the court shall look to the totality of the circumstances including, but not limited to: the child's age; intelligence; education; background and experience generally and in the court system specifically; the child's emotional stability; and the complexity of the proceedings. The Court shall ensure that a child consults with a parent, custodian, guardian, or guardian ad litem, before any waiver of counsel. However, no parent, guardian, custodian, or other person may waive the child's right to counsel.

(E) Other rights of a child may be waived with permission of the court.

[Effective: July 1, 1972; amended effective July 1, 1994; amended effective July 1, 2012.]

Staff Note (July 1, 2012 Amendment)

Ohio Revised Code §2151.352 establishes that juveniles have a right to counsel.

The amended rule is intended to implement a process for the mandates of the United States Supreme Court's decision *In re Gault* (1967), 387 U.S. 1 and the Supreme Court of Ohio's decision *In re C.S.* (2007), 115 Ohio St.3d 267, 2007-Ohio-4919, to ensure children have meaningful access to counsel and are able to make informed decisions about their legal representation.

Under Juv.R. 3 as it existed prior to amendment, a child facing a mandatory or discretionary bindover to adult court could not waive counsel. The amended rule adds to this prohibition on waiver of counsel by including a child charged as a serious youthful offender pursuant to ORC §2152.13 as required by ORC §2152.13(C)(2).

Division (A)(3) of the amendment differentiates between a conflict between the child and parent, custodian or guardian and a disagreement. If the interests of child parent, custodian, or guardian are adverse in the proceeding, a conflict exists and the child should be appointed counsel. If the parent, custodian, or guardian and the child disagree on the question of whether counsel is necessary for the child or if the right to counsel should be waived, counsel should be appointed.