

INFO CURRENT AS OF JUNE 2005

QUESTIONING A MINOR

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QUESTION: My child is a high school student. There have been some drug-related issues going on at the school. The local police are investigating. Recently, my child was questioned by the police without my permission or knowledge. Are the police allowed to question a minor without a parent's consent?

ANSWER: The key to answering this question is the word "allowed." There is no state or federal law which prohibits police from questioning a minor without parental consent. However, individual schools are free to adopt policies which would require parental consent prior to allowing police to question a student who is at school. Whether or not to have such a rule is completely up to the school.

Individual police departments may also adopt policies that forbid questioning of minors without parental consent. Neither the Manchester Police Department nor the Concord Police Department have any such policy. Instead, they proceed on a case-by-case basis, sometimes seeking parental permission prior to the questioning of a juvenile and sometimes not. However, there is nothing forbidding them from questioning minors without parental consent.

Another aspect of "allowed" is whether or not statements obtained from minors during interviews conducted without parental consent can be used against minors in court. The New Hampshire Supreme Court last dealt with this issue in 1985. In the case of *State v. Philip Benoit*, the defendant asked our Supreme Court to adopt the "interested adult" rule. Under that rule, no juvenile can be deemed to have voluntarily, knowingly and intelligently waived his or her privilege against self-incrimination and his or her right to counsel (the typical *Miranda* warnings) without first being provided the opportunity to consult with, and have present at interrogation, an adult who is informed of the juvenile's rights and is interested in the juvenile's welfare. At the time the *Benoit* case was decided, several other states had adopted this rule, including Indiana, Louisiana, Missouri, Vermont and West Virginia.

After careful consideration, the New Hampshire Supreme Court declined to adopt the "interested adult" rule, citing that such a rule "would result in onerous financial and administrative burdens which are unwarranted, given the protective and rehabilitative philosophy of the juvenile justice system." The Court went on to state that our State Constitution does not require such a rule. Although New Hampshire did not adopt the strict "interested adult" rule, the *Benoit* case did underscore the fact that minors fall within a very different category than adults when being questioned by the police. Our Supreme Court said that "the greatest care must be taken to assure that children fully understand the substance and significance of their rights." The Court went on to set out some important guidelines for the police to follow when questioning minors. These guidelines can be best thought of as explaining the usual *Miranda* warnings (You have the right to remain silent, you have the right to an attorney", etc.) in language understandable to a child.

By way of example, according to the regular adult *Miranda* warnings, a person being questioned need only be told, "You have the right to remain silent." According to the child-oriented *Benoit* warnings, a child must be told, "You have the right to remain silent. This means that you do not have to say or write anything. You do not have to talk to anyone or answer any questions we ask you and you will not be punished for deciding not to talk to us."

In order to encourage the use of these simplified *Miranda* warnings, our Supreme Court said that if a juvenile is not given a statement of his rights in the simplified fashion, the Court will presume that the explanation of the juvenile's rights was inadequate. This means that the police will not be

able to introduce the juvenile's statements against him or her in court, just as if he or she had never been read their rights.

As can be seen, there is no law or rule which prohibits minors from being questioned by police without parental consent. However, when dealing with juveniles, the police must use the simplified and especially thorough explanation of the child's rights contained in the *Benoit* case. Also, schools and local police departments are free to create and enforce their own policies which would require such parental notification and/or permission before any questioning could take place. And of course, parents are free to instruct their children not to speak with police unless a parent first gives permission. No person, and especially no child, is legally required to speak with the police.

Answered by **Attorney Nicholas Brodich** Moir & Brodich, P.A., Concord