

# **SHE'S SO COLD**

**Murder, Accusations and the  
System that Devastated a Family**

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**APPENDIX  
CHILDREN'S  
RIGHTS**

## • CHILDREN'S RIGHTS •

**A**fter reading this book, you may be thinking: How could this happen to these three boys and their families? Why weren't the parents told that their children were being detained and interrogated? Why weren't the parents told they could be present with their child during interrogation? And why weren't the parents told they had a right to consult with an attorney prior to their children being interrogated?

You may be wondering: How can children's rights be best protected? What are those rights? And can a child under eighteen years of age really understand and give up their rights, while appreciating the full consequences of what they are doing?

Regrettably, these same questions arise across this country on a daily basis as children are confronted by authority figures. The Crowe murder case is just one example, and not the last, in a long history of children confessing to crimes they did not commit. We adults must make sure that care is taken when the state deals with children.

The United States Supreme Court established four basic safeguards against self-incrimination in its 1966 decision of *Miranda v. Arizona*:

1. You have the right to remain silent.
2. Anything you say can be used against you in court.
3. You have the right to an attorney.
4. If you cannot afford an attorney, one will be provided for you.

These safeguards became known as the Miranda rights warnings. The specific wording of the warning varies, depending on the

state, or federal, jurisdiction. However, the basis is the same for all jurisdictions. A confession is invalid unless a suspect, in custodial interrogation, is informed of their Miranda rights prior to questioning.

Today these Miranda rights are read to children prior to in-custody questioning. However, studies have shown that minors—children and adolescents—lack the mental capability to fully comprehend the meaning of the rights; therefore, minors cannot make a “knowing and intelligent waiver of their constitutional rights” as required by law.

In an effort to improve children’s comprehension of their constitutional rights, the language of Miranda rights as read to adults should be simplified, and additional rights must be added for minors’ protection. To this end, the following Miranda-based safeguards should be read to suspects under the age of 18:

## • CHILDREN'S MIRANDA WARNING •

1. You have the right to remain silent. This means you do not have to say anything or answer my questions or any other officer's questions.
2. Anything you say may be used against you. This means what you say can be used against you in juvenile court or, if you're charged as an adult, in adult court. In other words, what you say can get you in trouble.
3. Before and during all questioning, you may have your parent or guardian present, and you may talk privately with your parent or guardian. So before you say anything, you may talk with your parent or guardian.
4. You or your parent or guardian may talk to an attorney, free of charge, before talking to us.
5. You or your parent or guardian may stop the interview at any time.
6. You or your parent or guardian may, at any time, have a free attorney with you during questioning.

Do you want to talk to your parent or guardian?

Do you want to have a lawyer present?

Do you want to talk to us?

Miranda rights are only effective if those rights are fully understood. To advance the understanding of those rights, a Children's Bill of Rights is proposed:

# • CHILDREN'S BILL OF RIGHTS •

1. A child shall have the same constitutional rights as an adult.
2. A child has the right to be advised of his or her Miranda rights when detained and questioned in a manner suited to his or her intellectual development.
3. A child shall have present, before and during any questioning, a parent or guardian or legal caregiver ("Custodial Parent") who shall exercise the child's Miranda rights in the best legal interest of their child.
4. A request by a child to talk to a Custodial Parent shall constitute the invocation of the child's Miranda right to remain silent.
5. No child or Custodial Parent shall waive the Miranda rights for a child 14 years or younger without first talking to an attorney, who must agree that the child's Miranda rights may be waived.
6. A child 15 years or older may waive their Miranda rights only after the child and their Custodial Parent first consults with an attorney.
7. If the child or their Custodial Parent cannot afford an attorney, one shall be provided before the child is questioned, at no cost.
8. The child, the Custodial Parent, and their attorney shall be advised of the nature of the matter being investigated and why the child is being questioned.
9. When the Custodial Parent is suspected of committing a crime, an attorney shall be provided, at no cost, to represent and advise the child regarding the child's

Miranda rights, and be present during questioning of the child.

10. If the child is suspected of a criminal offense, the child's attorney shall advise the child and the child's Custodial Parent that the child may be charged as a juvenile offender, subject to detention and rehabilitation under juvenile law, or, when allowed by law, may be charged and sentenced as an adult, including a sentence of life in prison.
11. All questioning of a child who has been detained shall be video recorded. The recording shall be preserved for use in a court of law, irrespective of whether the child is charged with a criminal offense.
12. A child shall not be questioned for more than 4 hours in a 24-hour period, and shall be allowed to eat and rest 8 hours between periods of questioning.

The rationale behind the Children's Bill of Rights is that the law recognizes a child as a legal person. As such, minors should have the same rights as adults, from the moment they are born. Parents, courts of law, and the community recognize that minors lack the intellectual development and life experiences that allow an adult to understand and exercise independent judgment to protect their rights and best interests. This is why minors should be afforded special protections when being detained and questioned by persons of authority. This is particularly true because a child's life, and the environment in which they are raised, is structured and completely controlled by adults. As a result, children are extremely vulnerable to psychologically coercive interrogations, and are much less resilient than adults when dealing with the criminal justice system.

If we are to nurture each and every child to their maximum potential, the criminal justice system should be structured in a way that protects children while rendering justice for society.

The Children's Bill of Rights and the Children's Miranda Warning will go far toward accomplishing this end.

For further reading on a child's ability to comprehend and knowingly and intelligently waive their constitutional rights and on how they respond to custodial interrogations, see: National Juvenile Justice Network, "Using Adolescent Brain Research to Inform Policy: A Guide for Juvenile Justice Advocates," September 2012, <http://www.njjn.org/our-work/adolescent-brain-research>; Allison D. Redlich, "The Susceptibility of Juveniles to False Confessions and False Guilty Pleas," 62 Rutgers Law Review 943 (2009); NES Goldstein, LO Condie, R Kalbeitzer, JL Geier, "Juvenile Offenders' Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions," National Center for Biotechnology Information, U.S. National Library of Medicine (Dec. 2003, 2005), <https://www.ncbi.nlm.nih.gov/pubmed/14682482>; Mary Beyer, "Recognizing the Child in the Delinquent," Kentucky Children's Rights Journal, vol. 7 (Summer of 1999); Catherine C. Lewis, "How Adolescents Approach Decisions: Changes over Grades Seven to Twelve and Policy Implications," Child Development, vol. 52 (1981); Steven Drizin and Richard A. Leo, "The Problem of False Confessions in the Post-DNA World," 82 N.C. Law Review 891 (2003-2004).