

# KNOW YOUR RIGHTS

## **Goals**

- Inform children of their due process right to counsel
- Illustrate the importance of counsel
- Teach children how to exercise their right to counsel

## **Student Objectives**

- Articulate their right to a lawyer and the importance of having a lawyer
- Demonstrate invoking their right
- Recognize that although there are different types of lawyers (public defenders, private attorneys) they all work for your rights

## **Procedure**

### **Introduction (15 minutes)**

Introduce the speakers and if the group is small enough, get the names of the students present. Using the “Why It’s Important” brochure, give an introduction to the students including statistics about the number of children who get involved in the system and debunking myths about how kids get caught up.

### **Mario’s Story Video Clip (15 minutes)**

Play the *Mario’s Story* video clip. This video includes scenes from the documentary that highlight the way children are treated in the system, the importance of having a good lawyer, and the effects of the system on children and their families. It ends with Mario speaking directly to the youth and imploring them not to give up their right to counsel.

### **Discussion (15 minutes)**

Discuss with the entire group their reactions to the *Mario’s Story* video. Specifically, ask the students what they did not know before watching the film and what parts of the film are familiar to them. Ask questions and give information relating to the specific issues raised in the clips. Use the attached Mario’s Story Discussion Questions as a guide.

### **Role Play: Demanding a Lawyer (20 minutes)**

Using the attached “Demanding a Lawyer” Role Play Script, have the students act out two different scenarios. The role play begins with a child being brought in to a police station and interrogated. In the first track, the child does not ask for a lawyer and attempts to get home earlier by talking his way out of the situation with the police. In the second track, the child demands a lawyer and we compare the two tracks to highlight the differences having a lawyer makes.

### **Discussion (15 minutes)**

Using the attached “Demanding a Lawyer” Role Play Discussion Questions, analyze with the children the difference that a lawyer makes and confirm that they understand how to exercise that right. If the size of the group allows, conduct this exercise as a small group discussion, where students will analyze the role play together, and then report back to the larger group.

### **Question and Answer (10 minutes)**

Use this time to answer any last questions children may have about their right to a lawyer, how to demand a lawyer, and the importance of a lawyer, along with other due process rights. Distribute the giveaway items and make sure the students understand how they can contact us for more information or to become a leader of another rights night with a community or school group they are involved in.

### ***Materials***

#### **In class Materials**

- *Mario’s Story* Video Clip
- *Mario’s Story* Discussion Questions
- “Demanding a Lawyer” Role Play Script
- “Demanding a Lawyer” Discussion Questions

#### **Materials for Distribution**

- “Why It’s Important to Know Your Rights” Booklet
- ACLU Waiver Cards
- NJDC Rights Cards
- I Want a Lawyer Bracelets

Know Your Rights Night  
Role Play Script

“I want a lawyer”

Scene 1- Sets the stage for both track A and track B

Narrator: A boy, about 14, is being brought into a police station. He is being booked and processed. He gives his name and other information.

Police Officer: Name, Age, Address

Boy: John Smith, 14, 131 Maple Ave

Narrator: The police officer leads John to another room, sits him down, and leaves. This is an interrogation room.

Scene 2A

Narrator: About half an hour has passed. The police officer comes back in.

Police Officer: I reached your mom. She can't leave work to come down here. So, let's just talk about this.

John: Can I go home?

Police Officer: Not just yet. Let's just talk about what happened first, then you'll be able to go home. I have to tell you that you have the right to remain silent, and you have the right to have an attorney present while we talk. Do you understand that?

John: Yeah

Police Officer: Do you want to wait for your mom or a lawyer to come down here, or do you just want to talk about this and then have us take you home.

John: No, I don't want to wait for anybody, I just want to go home.

Police Officer: Okay, so, from the way I see it, you were out with the other kids on the corner, and you had the money.

John: I didn't have any weed.

Police Officer: The kid Joe said he got the weed he had from you.

John: Joe's lying. I didn't have any weed.

Police Officer: John, there's a video camera in the store across the street that has you on the camera. You know if you tell the truth, then that will look good. They'll go easy on you.

John: Really? Well, yeah, he got the weed from me.

Police Officer: Okay, so I have to arrest you now.

Narrator: The police officer gets John to sign the waiver of his rights, he repeats his confession, and he is taken to the detention hall, where he will await his court date.

Let's take a look at this scene again, this time with John asking for a lawyer.

### Scene 2B

Police Officer: I reached your mom. She can't leave work to come down here. So, let's just talk about this.

John: Can I go home?

Police Officer: Not just yet. Let's just talk about what happened first, then you'll be able to go home. I have to tell you that you have the right to remain silent, and you have the right to have an attorney present while we talk. Do you understand that?

John: Yeah

Police Officer: Do you want to wait for your mom or a lawyer to come down here, or do you just want to talk about this and then have us take you home.

John: If I can't go home now, I would like to talk to an attorney. I do not wish to speak with you until I've had the chance to talk to an attorney.

Police Officer: It's probably going to be a long time before you get to see a lawyer. You sure you want to wait here, or do you think we should just try to talk this thing out?

John: I will wait. I do not wish to talk to you until I have had the chance to speak to an attorney.

Narrator: The police officer takes the boy to the detention hall, where he waits for his court date and the chance to speak to an attorney.

### Scene 3A

Narrator: The next day, John A. is taken to court. He does not have a lawyer, but the prosecutor has just offered him the chance to take a guilty plea. The prosecutor says that

he will suggest that John A. get between 3 and 6 months in the juvenile hall, but the judge can sentence John to as little or as much time as he wants.

Judge: John A. Smith, you are here to day on charges of distribution of marijuana. I see that you are not represented by a lawyer. You have the right to a lawyer, but you will have to go back to the detention hall and come back at a later day if you want a lawyer. Do you want me to get you a lawyer, or do you want to go ahead today?

John A.: I do not want a lawyer. I want to go ahead today.

Judge: And how do you plead?

John A.: I plead guilty.

Prosecutor: Your Honor, I think a sentence of 3 to 6 months is appropriate in this case.

Judge: Very well. John A. Smith. I sentence you to 6 months of detention to begin immediately. In 6 months time you will return to my court and I will decide what, if any, conditions of release to grant you.

Narrator: John A. is lead off, and taken back to the juvenile hall, where he will stay for at least the next 6 months.

### Scene 3B

Narrator: Now let's look at the same court hearing, but this time with John B. who asked for his attorney and did not confess. Before John is taken to the courtroom, a lawyer comes to the holding cell and talks to him. The lawyer has received a file about John and reviewed the information in it. He has spoken to John's parents, but he has not had a chance to speak to John until now.

Lawyer: Hi, John, today the prosecutor is going to have to prove to the judge that there is probable cause to charge you with distribution of marijuana. I am going to argue that the government lacks probable cause. I do not know who the judge will agree with.

John B.: We want the judge to agree with us, right? What happens then?

Lawyer: If the judge agrees with us that there is no probable cause for the charge, then you will be free to go.

John B.: And what if the judge agrees with the other guy instead?

Lawyer: Well, if that happens and the judge does find probable cause, then she will have to decide whether to release you or keep you detained before we come back for adjudication. Adjudication is the trial part of your case. I will argue that because you are involved in after school activities and have the support of your family that you are not a

flight risk and you should go home. The judge may want you to have some conditions of release like electronic monitoring and random drug testing. I will try to get you the least restrictive conditions. Do you understand that? Is there anything else you would like me to know about yourself before we go in there?

John B.: Yes, I understand. Did you know that I also tutor some kids at the end of the school day?

Lawyer: Great, that is something else that I will be able to tell the judge about you. Also, I've talked to the prosecutor and he said if you plead guilty to distribution he will look for a 3 to 6 month sentence. It is your decision whether or not you accept this plea offer, but I think that you could get a more lenient plea and that if you go to adjudication it is unlikely that the judge would sentence you to more than this. Do you understand these things? Do you have any questions about the plea offer?

John B.: If I say I did it, then I'll get 3 months?

Lawyer: If you agree to the plea, the prosecutor will recommend to the judge that you get anywhere from 3 months to 6 months. The judge doesn't have to listen to the prosecutor, though. The judge can give you a lot less, or also a lot more. I don't see any reason why the judge would give you more than 6 months, but that is not something that you or I can control. If you do plead guilty, you will be giving up most of your appeal rights. I think that if we go to trial, you have a good chance of winning, but even if the judge does adjudicate you delinquent, then she probably won't give you any more than 6 months. Also, as we start to get more evidence and go to adjudication, the prosecutor may offer a better plea deal.

John B.: Okay, I don't want to plead guilty now.

Narrator: John and his lawyer go to the courtroom. The prosecutor and the judge are there.

Judge: John B. Smith, you are being charged with possession of marijuana. Have you had the chance to talk to lawyer about how you would like to plead today?

John B.: Yes.

Prosecutor: Your honor, I would like to inform the court that we have offered John a plea to distribution that will expire in 72 hours.

Judge: John, have you had the chance to speak to your lawyer about this plea offer?

John B.: Yes, your honor.

Judge: And how would you like to plead to these charges?

John B.: Not guilty.

Judge: Very well. Is the state ready to present its evidence of probable cause?

Prosecutor: Yes, your honor.

Narrator: During this phase, which varies from state to state, but is often called a probable cause hearing, the prosecutor will probably present the arresting police officer, who will tell the judge what he saw and why he arrested John. John's lawyer will cross examine the police officer. John's lawyer will be seeking to show that there is no probable cause to believe that John committed the crime he is charged with, but the lawyer will also be getting valuable information from the police officer, so that if John does go to adjudication, the lawyer will be able to build a defense for John. Most often, probable cause will be shown. However, John's lawyer will tell the judge about John's ties to his community and the support that John receives at home.

Judge: Today, I find that there is probable to cause to believe the John has been involved in distributing marijuana. Because I believe that John has the support of his family and his church and that he is involved in after school activities, I order him released to the custody of his mother. John is to submit to random drug tests and report to a pre-trial officer weekly. John is to observe an 8 pm curfew on school nights and 10 pm on weekends. I set adjudication for 4 weeks from today with any pre-adjudicatory motions due 1 week in advance.

Narrator: During the time between the probable cause hearing and adjudication, the lawyer will do several things for John. He will conduct investigation to find witnesses that may say different things than the police. He will also file and argue motions about what kind of evidence can be used at adjudication. For instance in the case of John A., if he had asked for a lawyer at his probable cause hearing, instead of waiving his right again, that lawyer could argue that his confession to the police was unconstitutional and so could not be used at his adjudication. Even if you do not ask for a lawyer during a police interrogation, you can still demand a lawyer to represent you in the court.

#### Scene 4- This scene only applies to Track B

Narrator: John B., but not John A., will go to adjudication. His lawyer will object to things she does not think the prosecutor should say or present as evidence, she will cross examine the government's witnesses, and she will put on evidence of her own. Let's look and see what some of the different results could be. First, before the trial starts, the prosecutor may offer John and his lawyer another plea deal:

Prosecutor: Your honor, the state would like to extend to John an offer to plead guilty to simple possession with a recommendation of one year of probation, upon successful completion of which, the state will expunge all records of this charge.

Lawyer: Your honor, may I have a moment to consult with my client?

Judge: We will take an hour recess before we begin with the evidence in the case.

Narrator: A second possible outcome is this:

Judge: I have received all the evidence in this case and listened to the argument of the attorneys. After deliberating, John B. Smith, I find that there is insufficient evidence to believe beyond a reasonable doubt that you have committed the delinquent act of distribution of marijuana. You did not have any drugs on your person at the time of your arrest. In addition, there were several other young men in the area at the time, and a resident of the area gave a description of a young man dealing drugs that did not match your physical characteristics. Therefore, you are free to go.

John and Lawyer: Thank you, your honor.

Narrator: A third, likely outcome is as follows:

Judge: John B. Smith, I believe beyond a reasonable doubt that you have committed the delinquent act of distribution of marijuana. Although you did not have any drugs on your person at the time of your arrest, testimony was received from another young man that he bought the marijuana on his person from you. I found his testimony credible. You were in possession of sufficient money to have finished selling the marijuana, which would explain its absence. While you were not a perfect match of the physical description given by the resident that witnessed the drug transactions, it is not clear that he had a perfect view of the corner, and you did bear some similarities. Therefore, I sentence you to 3 months in juvenile hall, sentence suspended. You have shown to me during the pre-adjudication period that you can obey the rules. You have consistently tested negative on your drug tests, and have no violations of curfew. Therefore, I am going to order you to report to probation for a year's time. If you mess up, you will have to serve your sentence. I am going to set you for a review hearing in 3 months time. Have a good day.

## Discussion Questions Exercises

### Exercise #1 *Mario's Story* Discussion

Instructions: As a group, discuss the following questions:

1. Did anything surprise you about Mario's story? Were you familiar with any of the themes or issues that Mario's Story highlights?
  2. Do you think Mario could have convinced the prosecutor or the police officers to let him go because he was innocent if he talked to them? If you were in a similar situation, do you think you would have tried to convince the police and prosecutors you were innocent?
  3. In what ways did the lawyers (Ian Graham and Bob Long) help Mario and his family? Do you think Mario's family could have won the appeals without the help of the lawyers?
  4. What was wrong with the way Mario's first lawyer represented him? If you had a lawyer that was not representing you zealously, what would you do?
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### Exercise #2 Role Play Discussion

Instructions: In groups of 3 or 4, discuss the following questions among yourselves, then report back to the larger group. Depending on time and group size limits, you may want to assign a question of two to each small group.

1. What would be the first thing you say or do when stopped by an officer? Would you talk to a police officer without an attorney? Why or why not?
2. Is it possible to go through court procedures without a lawyer? Is it legal? Is there any benefit from going to court without a lawyer?
3. Do you feel that lawyers can help you?
4. If you went to juvenile court, what are some things you could do to help your lawyer represent you?