

STND4YOU, Inc. Forensic Speech-Language Pathology Clinical Opinion Letter

To: D.C. Council Committee on the Judiciary and Public Safety

Bill: B23-0882, THE “COMPREHENSIVE POLICING AND JUSTICE REFORM AMENDMENT ACT OF 2020”

Re: A More Mature Miranda Doctrine

October 15, 2020

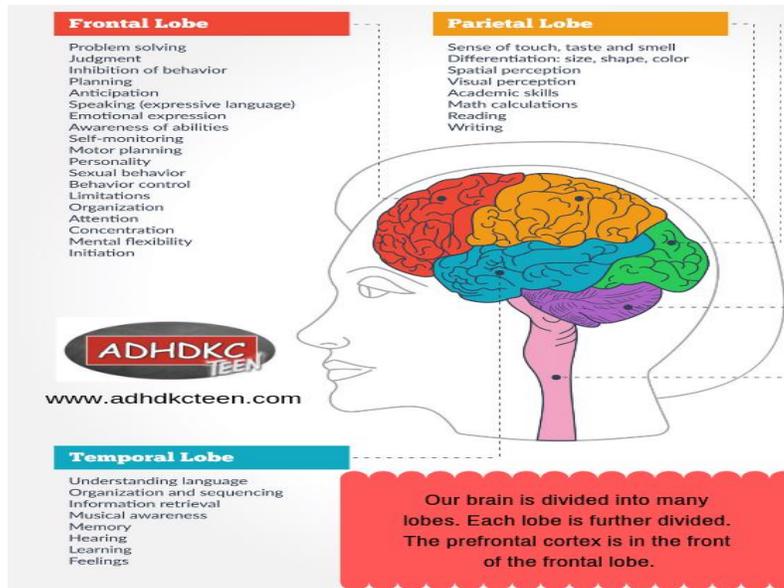
STND4YOU, Inc. is a Nonprofit organization developed to address diversion, advocacy and free wrap-around clinical services for Black and Latinx youth who are placed at-risk for delinquency and involvement with the justice system secondary to their overlooked cognitive and communication disorders. There is a portion of the need for more mature Miranda Rights that we believe should make mention of the number of Black youth who are also overrepresented in the special education system who do not understand their rights due to varying language and learning disorders. Clinicians like Speech-Language Pathologists should be consulted to discuss what and how the youth's understanding can be impacted during this process. We would like to be involved to add this piece to a very powerful movement you are creating. Our founder, Dr. Shameka Stanford is an associate professor in the department of Communication Sciences & Disorders at Howard University, and a juvenile Forensic Speech-Language Pathologist (the first and only in the United States) with a clinical specialty in in juvenile law and special education law.

This letter is written to support the More Mature Miranda Initiative. In support of the more mature Miranda initiative, it is important for me to highlight how the presence of cognitive and communication disorders can increase a youth's vulnerability to waive a right they do not inherently have the knowledge, intelligence, and cognitive ability to comprehend. My opinions are based on my education in the area of communication sciences and disorders and forensics, clinical training, and clinical forensic experience in relation to these matters. Research has demonstrated that children account for an increased amount of coerced confessions secondary to their developing cognitive abilities. However, the discussion about coerced confessions cannot be had without addressing the prevalence of children living with learning disabilities, cognitive and communication disorders who are coerced or falsely confess to crimes. Communication and Cognitive disorders (CCD) is defined as a deficit or significant impairment in the primary functions of attention, memory, problem solving, emotional functioning, comprehension and production, literacy, pragmatics, social skills, and expressive and receptive language (American Speech-Language-Hearing Association, 1997). Cognitive-communication disorders can impact an individual's communication and comprehension status in a way that affects their ability to fully participate in their (Stanford, 2019). More specifically, during the Miranda rights, cognitive and communication impairments affect the individual's comprehension, judgement, consequential thinking, and decision-making skills. This is most prevalent in children with cognitive and communication disorders during a time where their brain is also concurrently developing.

Maturity of language and cognitive skills occurs with the development of the frontal lobe, particularly the prefrontal cortex (PFC), which is a continuous process from childhood until late adolescence (Ciccia, Meulenbroek, & Turkstra, 2009). The frontal lobe in a typically developing brain controls the child's ability to emotionally regulate as well as, problem-solving, process information/think, and comprehend information. However, the brain and particularly the frontal lobe does not fully develop until approximately 25 years of age or older. Consequently, this means the prefrontal and temporal cortexes of the child with a cognitive and communication impairments that responds to and utilizes good judgement and comprehension is not consistently and automatically activated when engaging with law enforcement. In a child with cognitive and communication disorders, there are areas of the brain that are necessary for the ability to comprehend, functionally problem solve, and think rationally that will never be fully developed (Johnson, Blum, & Geidd, 2009; Stanford, 2018). Explicitly, secondary to cognitive and communication disorders, areas of the brain that regulates the child's verbal-reasoning skills, problem

solving skills, and comprehension during the reading of Miranda rights may take longer than the 25 years old to fully develop, if at all.

The visual below presents the **frontal and temporal lobe areas** of the typically developing brain where children with cognitive and communication disorders experiences significant impact in the areas where consequential thinking, problem-solving, judgment, self-monitoring, concentration, attention, and most importantly understanding language are control are activated.



In the area of **cognition**, memory, reasoning, judgment, attention and concentration impairments can impact the child's ability to understand the Miranda rights. In the area of **executive functioning**, impairment in problem-solving, decision-making, organization, and planning can impact the child's ability to understand the Miranda rights. As aforementioned, to inherently understand Miranda Rights to the extent you make a conscious decision to waiving your rights would require; (1) functional critical thinking, (2) executive function, (3) and comprehension skills. At a micro level the child with underlying language impairments would also need to possess strong vocabulary, verbal reasoning, inferencing, and recalling information skills. In the areas of **communication**, impairments in thinking and processing, difficulty understanding language, and vocabulary deficits can impair the child's ability to understand the Miranda rights. For instance, in a 2018 (not yet published) research study in which I analyzed the confluence of cognitive and communication disorders and increased risk of referral to the justice system for black youth, 85% of the participants demonstrated vocabulary impairments. Further, data from the research study demonstrated that 90% of the participants were unable to define 70% of the words presented in the Miranda Rights. For example, a 70% of the participants were unable to define the words attorney, appointed, and afford. The findings of this analysis identified six key domains of communication and cognition that when impaired can increase the risk of youth being coerced into confessions, and false or forced waivers of their rights. These areas included: 1) age-appropriate vocabulary development and skills; 2) abstract language comprehension; and 4) processing and organizational planning. This demonstrates that although the youth may verbalize understanding and demonstrate a surface level comprehension of the words of the Miranda rights in isolation; it is more likely than not, a significant portion are unable to comprehend the words contained within it well enough to understand the overall context.

Lastly, the inability to functionally track and participate in conversations with peers and adults can impair the child's ability to understand the Miranda rights. This information is most relevant to understanding how cognitive and communicative disorders in children can impact their understanding of the information presented in the Miranda rights. The Miranda rights are built on the expectation that the individual can demonstrate and process what is requested of them and what will occur during the law

enforcement interaction. To do this, the individual must be able to follow directions, comprehend the words used, recall information, and infer the consequences of what may occur if they choose to waive their rights. Consequently, children with cognitive and communication disorders are significantly unable to decipher what is expected of them resulting in misunderstandings which can increase their risk of waiving their rights. Especially when the child is engaged in a situation that causes frustration, anxiety, tension distress. During heightened situations of distress, like being arrested or unexpected law enforcement interaction, children with cognitive and communication disorders will primarily rationalize and respond with the emotional parts of their brain, not taking the time to determine if the communication lacks comprehension.

Therefore, it becomes necessary that as we determine a more mature Miranda, we keep in context that just because children may be able to periodically demonstrate the ability to determine what is happening, does not mean that their cognitive and communication limitations and impairments are not consistently present and likely to impact their ability to understand their rights and the consequences of waiving their rights.

Thank you,

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Juvenile Forensic Speech-Language Pathologist

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