

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1052

Introduced by Senators Lara and Mitchell

February 16, 2016

An act to add Section 625.6 to the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1052, as amended, Lara. ~~Juveniles.—Custodial interrogation: juveniles.~~

Existing law authorizes a peace officer to take a minor into temporary custody when that officer has reasonable cause to believe that the minor has committed a crime or violated an order of the juvenile court. In these circumstances, existing law requires the peace officer to advise the minor that anything he or she says can be used against him or her, that he or she has the right to remain silent, that he or she has a right to have counsel present during any interrogation, and that he or she has a right to have counsel appointed if he or she is unable to afford counsel.

~~This bill would state the intent of the Legislature to enact legislation relating to juveniles.~~

This bill would require that a youth under 18 years of age consult with counsel prior to a custodial interrogation and before waiving any of the above specified rights. The bill would provide that consultation with counsel cannot be waived. If a custodial interrogation takes place before the youth has consulted with counsel, the bill would require the court to consider the effect of the failure to comply with the above-specified requirement and to consider the circumstances surrounding statements made without the assistance of counsel. The bill would make a failure to comply with its provisions admissible in

support of claims that the youth’s statement was obtained in violation of his or her rights, was involuntary, or is unreliable. The bill would require the Judicial Council to develop an instruction advising that statements made in a custodial interrogation in violation of these provisions be viewed with caution and would require the court to provide the jury or trier of fact with the instruction.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *Developmental and neurological science concludes that the*
4 *process of cognitive brain development continues into adulthood,*
5 *and that the human brain undergoes “dynamic changes throughout*
6 *adolescence and well into young adulthood.” (See Richard J.*
7 *Bonnie, et al., Reforming Juvenile Justice: A Developmental*
8 *Approach, National Academies of Science (2012), page 96, and*
9 *Chapter 4.) As recognized by the United States Supreme Court,*
10 *children and youth “‘generally are less mature and responsible*
11 *than adults,’” (J.D.B. v. North Carolina (2011) 131 S.Ct. 2394,*
12 *2397, quoting Eddings v. Oklahoma (1982) 455 U.S. 104, 115);*
13 *“they ‘often lack the experience, perspective, and judgment to*
14 *recognize and avoid choices that could be detrimental to them,”*
15 *(J.D.B., 131 S.Ct. at 2397, quoting Bellotti v. Baird (1979) 443*
16 *U.S. 622, 635); “they ‘are more vulnerable or susceptible to...*
17 *outside pressures’ than adults” (J.D.B., 131 S.Ct. at 2397, quoting*
18 *Roper v. Simmons (2005) 543 U.S. 551, 569); they “have limited*
19 *understandings of the criminal justice system and the roles of the*
20 *institutional actors within it” (Graham v. Florida (2010) 560 U.S.*
21 *48, 78); and “children characteristically lack the capacity to*
22 *exercise mature judgment and possess only an incomplete ability*
23 *to understand the world around them” (J.D.B., 131 S.Ct. at 2397).*

24 (b) *Custodial interrogation of an individual by the state requires*
25 *that the individual be advised of his or her rights and make a*
26 *knowing, intelligent, and voluntarily waiver of those rights before*
27 *the interrogation proceeds. People under 18 years of age have a*
28 *lesser ability as compared to adults to comprehend the meaning*
29 *of their rights and the consequences of waiver. Additionally, a*

1 large body of research has established that adolescent thinking
2 tends to either ignore or discount future outcomes and implications,
3 and disregard long-term consequences of important decisions.
4 (See, e.g., Steinberg et al., “Age Differences in Future Orientation
5 and Delay Discounting”; William Gardner and Janna Herman,
6 “Adolescent’s AIDS Risk Taking: A Rational Choice Perspective,”
7 in *Adolescents in the AIDS Epidemic*, ed. William Gardner et al.
8 (San Francisco: Jossey Bass, 1990), pp. 17, 25-26; Marty Beyer,
9 “Recognizing the Child in the Delinquent,” *Kentucky Child Rights*
10 *Journal*, vol. 7 (Summer 1999), pp. 16-17; National Juvenile
11 Justice Network, “Using Adolescent Brain Research to Inform
12 Policy: A Guide for Juvenile Justice Advocates,” September 2012,
13 pp. 1-2; Catherine C. Lewis, “How Adolescents Approach
14 Decisions: Changes over Grades Seven to Twelve and Policy
15 Implications,” *Child Development*, vol. 52 (1981), pp. 538,
16 541-42). Addressing the specific context of police interrogation,
17 the United States Supreme Court observed that events that “would
18 leave a man cold and unimpressed can overawe and overwhelm
19 a lad in his early teens” (*Haley v. Ohio*, (1948) 332 U.S. 596
20 (plurality opinion)), and noted that “‘no matter how sophisticated,’
21 a juvenile subject of police interrogation ‘cannot be compared’
22 to an adult subject,” *J.D.B.*, 131 S.Ct. at 2394, quoting *Gallegos*
23 *v. Colorado* (1962) 370 U.S. 49, 54). The law enforcement
24 community now widely accepts what science and the courts have
25 recognized: Children and adolescents are much more vulnerable
26 to psychologically coercive interrogations and in other dealings
27 with the police than resilient adults experienced with the criminal
28 justice system.

29 (c) For these reasons, youth under 18 years of age should
30 consult with counsel prior to making a waiver of rights. In the
31 determination of whether a child or youth has knowingly,
32 intelligently, and voluntarily waived his or her rights under
33 *Miranda v. Arizona* (1966) 384 U.S. 436, a court must take into
34 account the special concerns that are present when a young person
35 is involved, including a child or youth’s limited experience,
36 education and immature judgment (*Fare v. Michael C.* (1979) 442
37 U.S. 707, 725). These concerns must also take into consideration
38 whether a child’s or youth’s age or experience indicates that his
39 or her request for a probation officer, parent, or other adult is in

1 *fact an invocation of his or her right to remain silent (Fare, 442*
2 *U.S. at 725).*

3 *SEC. 2. Section 625.6 is added to the Welfare and Institutions*
4 *Code, to read:*

5 *625.6. (a) Prior to a custodial interrogation, and before the*
6 *waiver of any Miranda rights, a youth under 18 years of age shall*
7 *consult with counsel. The consultation may not be waived.*

8 *(b) If a custodial interrogation of a minor under 18 years of*
9 *age occurs prior to the youth consulting with counsel, all of the*
10 *following remedies shall be granted as relief for noncompliance*
11 *with subdivision (a):*

12 *(1) The court shall, in adjudicating the admissibility of*
13 *statements of a youth under 18 years of age made during or after*
14 *a custodial interrogation, consider the effect of failure to comply*
15 *with subdivision (a) and the factors specified in subdivision (c).*

16 *(2) Provided the evidence is otherwise admissible, the failure*
17 *to comply with subdivision (a) shall be admissible in support of*
18 *claims that the youth's statement was obtained in violation of his*
19 *or her Miranda rights, was involuntary, or is unreliable.*

20 *(3) If the court finds that a youth under 18 years of age was*
21 *subject to a custodial interrogation in violation of subdivision (a),*
22 *the court shall provide the jury, or if a bench trial, the trier of fact,*
23 *with the instruction developed pursuant to subdivision (d).*

24 *(c) In determining whether an admission, statement, or*
25 *confession made by a youth under 18 years of age was voluntarily,*
26 *knowingly, and intelligently made, the court shall consider all the*
27 *circumstances surrounding the statements, including, but not*
28 *limited to, all of the following:*

29 *(1) The youth's age, maturity, intellectual capacity, education*
30 *level, and physical, mental, and emotional health.*

31 *(2) The capacity of the youth to understand Miranda rights,*
32 *including the nature of the privilege against self-incrimination*
33 *under the United States and California Constitutions, the*
34 *consequences of waiving those rights and privileges, whether the*
35 *youth perceived the adversarial nature of the situation, and whether*
36 *the youth was aware of how counsel could assist the youth during*
37 *interrogation.*

38 *(3) The manner in which the youth was advised of his or her*
39 *rights, and whether the rights specified in the Miranda rule were*
40 *minimized by law enforcement.*

1 (4) *The youth’s reading and comprehension level and his or*
2 *her understanding of the Miranda rights given by law enforcement.*

3 (5) *Whether there was an express or implied waiver of Miranda*
4 *rights.*

5 (6) *Whether the youth asked to speak with a parent or other*
6 *adult at any time while in law enforcement custody.*

7 (7) *Whether law enforcement offered to allow the youth to*
8 *consult with a parent or guardian prior to the interrogation, or*
9 *whether law enforcement took steps to prevent a parent or guardian*
10 *from speaking to the youth prior to interrogation.*

11 (8) *Whether the youth had been interrogated previously by law*
12 *enforcement and whether the youth invoked his or her Miranda*
13 *rights previously.*

14 (9) *Whether the youth requested to leave.*

15 (10) *Whether law enforcement either by express or implied*
16 *conduct intimated that the youth could leave after speaking, or if*
17 *any other promises of leniency were made.*

18 (11) *The manner in which the interrogation occurred, including*
19 *length of time, method of interrogation, location, number of*
20 *individuals present, the treatment of the youth by law enforcement,*
21 *the tone and manner of questioning during interrogation, whether*
22 *law enforcement personnel were in uniform, if ruses were used, if*
23 *express or implied threats were made, and if applicable, the failure*
24 *to comply with Section 627.*

25 (12) *Whether the youth consulted with counsel prior to waiver.*

26 (13) *Any other relevant evidence.*

27 (d) *The Judicial Council shall develop an instruction, to be used*
28 *pursuant to paragraph (3) of subdivision (b), advising that*
29 *statements made in a custodial interrogation in violation of*
30 *subdivision (a) shall be viewed with caution.*

31 (e) *For purposes of this section, “Miranda rights” refers to the*
32 *rights specified in subdivision (c) of Section 625.*

33 ~~SECTION 1. It is the intent of the Legislature to enact~~
34 ~~legislation relating to juveniles.~~

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