

AMENDED IN SENATE MAY 31, 2016
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. 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 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~~ *above-specified* rights. The bill would provide that consultation with *legal* counsel cannot be waived. If a custodial interrogation takes place before the youth has consulted with *legal* 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 *legal* 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: 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
30 large body of research has established that adolescent thinking
31 tends to either ignore or discount future outcomes and implications,

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

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

39 SEC. 2. Section 625.6 is added to the Welfare and Institutions
40 Code, to read:

1 625.6. (a) Prior to a custodial interrogation, and before the
2 waiver of any Miranda rights, a youth under 18 years of age shall
3 consult with *legal* counsel. The consultation may not be waived.

4 (b) If a custodial interrogation of a minor under 18 years of age
5 occurs prior to the youth consulting with *legal* counsel, all of the
6 following remedies shall be granted as relief for noncompliance
7 with subdivision (a):

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

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

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

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

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

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

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

37 (4) The youth's reading and comprehension level and his or her
38 understanding of the Miranda rights given by law enforcement.

39 (5) Whether there was an express or implied waiver of Miranda
40 rights.

- 1 (6) Whether the youth asked to speak with a parent or other
2 adult at any time while in law enforcement custody.
- 3 (7) Whether law enforcement offered to allow the youth to
4 consult with a parent or guardian prior to the interrogation, or
5 whether law enforcement took steps to prevent a parent or guardian
6 from speaking to the youth prior to interrogation.
- 7 (8) Whether the youth had been interrogated previously by law
8 enforcement and whether the youth invoked his or her Miranda
9 rights previously.
- 10 (9) Whether the youth requested to leave.
- 11 (10) Whether law enforcement either by express or implied
12 conduct intimated that the youth could leave after speaking, or if
13 any other promises of leniency were made.
- 14 (11) The manner in which the interrogation occurred, including
15 length of time, method of interrogation, location, number of
16 individuals present, the treatment of the youth by law enforcement,
17 the tone and manner of questioning during interrogation, whether
18 law enforcement personnel were in uniform, if ruses were used,
19 if express or implied threats were made, and if applicable, the
20 failure to comply with Section 627.
- 21 (12) Whether the youth consulted with *legal* counsel prior to
22 waiver.
- 23 (13) Any other relevant evidence.
- 24 (d) The Judicial Council shall develop an instruction, to be used
25 pursuant to paragraph (3) of subdivision (b), advising that
26 statements made in a custodial interrogation in violation of
27 subdivision (a) shall be viewed with caution.
- 28 (e) For purposes of this section, “Miranda rights” refers to the
29 rights specified in subdivision (c) of Section 625.