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SENATE BILL

No. 1052

**Introduced by Senators Lara and Mitchell
(Principal coauthor: Senator Leno)**

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 *legal counsel in person, by telephone, or by video conference* prior to a custodial interrogation and before waiving any of the 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~~ *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.~~ *requirement in adjudicating the admissibility of statements of a youth under 18 years of age made during or after a custodial interrogation.* The bill also clarifies that these provisions do not apply to the admissibility of statements of a youth under 18 years of age if certain criteria are met.

Vote: majority. Appropriation: no. Fiscal committee: no.
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).

1 (b) Custodial interrogation of an individual by the state requires
2 that the individual be advised of his or her rights and make a
3 knowing, intelligent, and voluntarily waiver of those rights before
4 the interrogation proceeds. People under 18 years of age have a
5 lesser ability as compared to adults to comprehend the meaning
6 of their rights and the consequences of waiver. Additionally, a
7 large body of research has established that adolescent thinking
8 tends to either ignore or discount future outcomes and implications,
9 and disregard long-term consequences of important decisions.
10 (See, e.g., Steinberg et al., “Age Differences in Future Orientation
11 and Delay Discounting”; William Gardner and Janna Herman,
12 “Adolescent’s AIDS Risk Taking: A Rational Choice Perspective,”
13 in *Adolescents in the AIDS Epidemic*, ed. William Gardner et al.
14 (San Francisco: Jossey Bass, 1990), pp. 17, 25-26; Marty Beyer,
15 “Recognizing the Child in the Delinquent,” *Kentucky Child Rights*
16 *Journal*, vol. 7 (Summer 1999), pp. 16-17; National Juvenile Justice
17 Network, “Using Adolescent Brain Research to Inform Policy: A
18 Guide for Juvenile Justice Advocates,” September 2012, pp. 1-2;
19 Catherine C. Lewis, “How Adolescents Approach Decisions:
20 Changes over Grades Seven to Twelve and Policy Implications,”
21 *Child Development*, vol. 52 (1981), pp. 538, 541-42). Addressing
22 the specific context of police interrogation, the United States
23 Supreme Court observed that events that “would leave a man cold
24 and unimpressed can overawe and overwhelm a lad in his early
25 teens” (*Haley v. Ohio*, (1948) 332 U.S. 596 (plurality opinion)),
26 and noted that “‘no matter how sophisticated,’ a juvenile subject
27 of police interrogation ‘cannot be compared’ to an adult subject”
28 (*J.D.B.*, 131 S.Ct. at 2394, quoting *Gallegos v. Colorado* (1962)
29 370 U.S. 49, 54). The law enforcement community now widely
30 accepts what science and the courts have recognized: Children and
31 adolescents are much more vulnerable to psychologically coercive
32 interrogations and in other dealings with the police than resilient
33 adults experienced with the criminal justice system.

34 (c) For these reasons, *in situations of custodial interrogation*
35 *and prior to making a waiver of rights under Miranda v. Arizona*
36 *(1966) 384 U.S. 436*, youth under 18 years of age should consult
37 with legal counsel prior to making a waiver of rights. In the
38 determination of whether a child or youth has knowingly,
39 intelligently, and voluntarily waived his or her rights under *Miranda*
40 *v. Arizona (1966) 384 U.S. 436*, a court must take into account

1 the special concerns that are present when a young person is
2 involved, including a child or youth's limited experience, education
3 and immature judgment (*Fare v. Michael C.* (1979) 442 U.S. 707,
4 725). These concerns must also take into consideration whether a
5 child's or youth's age or experience indicates that his or her request
6 for a probation officer, parent, or other adult is in fact an invocation
7 of his or her right to remain silent (*Fare*, 442 U.S. at 725). *counsel*
8 *to assist in their understanding of their rights and the consequences*
9 *of waiving those rights.*

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

12 625.6. (a) Prior to a custodial interrogation, and before the
13 waiver of any Miranda rights, a youth under 18 years of age shall
14 consult with legal counsel: *counsel in person, by telephone, or by*
15 *video conference.* The consultation may not be waived.

16 (b) ~~If a custodial interrogation of a minor under 18 years of age~~
17 ~~occurs prior to the youth consulting with legal counsel, both of the~~
18 ~~following remedies shall be granted as relief for noncompliance~~
19 ~~with subdivision (a):~~

20 (1)

21 (b) The court shall, in adjudicating the admissibility of
22 statements of a youth under 18 years of age made during or after
23 a custodial interrogation, consider the effect of failure to comply
24 with subdivision (a) and the factors specified in subdivision (e).
25 (a).

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

30 (c) ~~In determining whether an admission, statement, or~~
31 ~~confession made by a youth under 18 years of age was voluntarily,~~
32 ~~knowingly, and intelligently made, the court shall consider all the~~
33 ~~circumstances surrounding the statements, including, but not~~
34 ~~limited to, all of the following:~~

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

37 (2) ~~The capacity of the youth to understand Miranda rights,~~
38 ~~including the nature of the privilege against self-incrimination~~
39 ~~under the United States and California Constitutions, the~~
40 ~~consequences of waiving those rights and privileges, whether the~~

1 youth perceived the adversarial nature of the situation, and whether
2 the youth was aware of how legal counsel could assist the youth
3 during interrogation.

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

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

9 ~~(5) Whether there was an express or implied waiver of Miranda
10 rights.~~

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

13 ~~(7) Whether law enforcement offered to allow the youth to
14 consult with a parent or guardian prior to the interrogation, or
15 whether law enforcement took steps to prevent a parent or guardian
16 from speaking to the youth prior to interrogation.~~

17 ~~(8) Whether the youth had been interrogated previously by law
18 enforcement and whether the youth invoked his or her Miranda
19 rights previously.~~

20 ~~(9) Whether the youth requested to leave.~~

21 ~~(10) Whether law enforcement either by express or implied
22 conduct intimated that the youth could leave after speaking, or if
23 any other promises of leniency were made.~~

24 ~~(11) The manner in which the interrogation occurred, including
25 length of time, method of interrogation, location, number of
26 individuals present, the treatment of the youth by law enforcement,
27 the tone and manner of questioning during interrogation, whether
28 law enforcement personnel were in uniform, if ruses were used,
29 if express or implied threats were made, and if applicable, the
30 failure to comply with Section 627.~~

31 ~~(12) Whether the youth consulted with legal counsel prior to
32 waiver.~~

33 ~~(13) Any other relevant evidence.~~

34 ~~(d)~~

35 (c) This section does not apply to the admissibility of statements
36 of a youth under 18 years of age if both of the following criteria
37 are met:

38 (1) The officer who questioned the suspect reasonably believed
39 the information he or she sought was necessary to protect life or
40 property from a substantial threat.

1 (2) The officer’s questions were limited to those questions that
2 were reasonably necessary to obtain this information.

3 ~~(e) For purposes of this section, “Miranda rights” refers to the~~
4 ~~rights specified in subdivision (c) of Section 625.~~

5 *(d) This section does not require a probation officer to comply*
6 *with subdivision (a) in the normal performance of his or her duties*
7 *under Sections 625, 627.5, or 628.*