

AMENDED IN SENATE AUGUST 25, 1998

AMENDED IN SENATE AUGUST 17, 1998

AMENDED IN SENATE JULY 16, 1998

AMENDED IN ASSEMBLY JUNE 25, 1998

AMENDED IN ASSEMBLY MAY 18, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2816**

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**Introduced by Assembly Member Baugh  
(Coauthor: Assembly Member Migden)**

April 15, 1998

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An act to add Section 701.5 to the Penal Code, relating to minors, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2816, as amended, Baugh. Minors: informants.

Existing law authorizes a finding of probable cause to make an arrest without a warrant or to grant an arrest warrant or a search warrant, based upon information provided by an informant under certain circumstances.

This bill would prohibit any peace officer or agent of a peace officer from using a person 12 years of age or younger as a minor informant, and from using a person under the age of 18 years as a minor informant, except as authorized pursuant to the Stop Tobacco Access to Kids Enforcement Act, unless the peace officer or agent of a peace officer has obtained an order

from the court authorizing the minor’s cooperation. The bill would require the court, prior to issuing such an order, and after specified conditions are satisfied, to make a finding that the agreement to act as a minor informant is voluntary and is being entered into knowingly and intelligently.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 701.5 is added to the Penal Code,  
2 to read:  
3 701.5. (a) Notwithstanding subdivision (b), no  
4 peace officer or agent of a peace officer shall use a person  
5 who is 12 years of age or younger as a minor informant.  
6 (b) No peace officer or agent of a peace officer shall  
7 use a person under the age of 18 years as a minor  
8 informant, except as authorized pursuant to the Stop  
9 Tobacco Access to Kids Enforcement Act (Division 8.5  
10 (commencing with Section 22950) of the Business and  
11 Professions Code) for the purposes of that act, unless the  
12 peace officer or agent of a peace officer has obtained an  
13 order from the court authorizing the minor’s  
14 cooperation.  
15 (c) Prior to issuing any order pursuant to subdivision  
16 (b), the court shall find, after consideration of (1) the age  
17 and maturity of the minor, (2) the gravity of the minor’s  
18 alleged offense, (3) the safety of the public, and (4) the  
19 interests of justice, that the agreement to act as a minor  
20 informant is voluntary and is being entered into  
21 knowingly and intelligently.  
22 (d) Prior to the court making the finding required in  
23 subdivision (c), all of the following conditions shall be  
24 satisfied:  
25 (1) The court has found probable cause that the minor  
26 committed the alleged offense. The finding of probable  
27 cause shall only be for the purpose of issuing the order



1 pursuant to subdivision (b), and shall not prejudice the  
2 minor in any future proceedings.

3 (2) The court has advised the minor of the mandatory  
4 minimum and maximum sentence for the alleged offense.

5 (3) The court has disclosed the benefit the minor ~~will~~  
6 *may* obtain by cooperating with the peace officer or agent  
7 of a peace officer.

8 (4) The minor's parent or guardian has consented to  
9 the agreement by the minor unless the parent or  
10 guardian is a suspect in the criminal investigation.

11 (e) For purposes of this section, "minor informant"  
12 means a minor who participates, on behalf of a law  
13 enforcement agency, in a prearranged transaction or  
14 series of prearranged transactions with direct face-to-face  
15 contact with any party, when the minor's participation in  
16 the transaction is for the purpose of obtaining or  
17 attempting to obtain evidence of illegal activity by a third  
18 party *and where the minor is participating in the*  
19 *transaction for the purpose of reducing or dismissing a*  
20 *pending juvenile petition against the minor.*

21 SEC. 2. This act is an urgency statute necessary for the  
22 immediate preservation of the public peace, health, or  
23 safety within the meaning of Article IV of the  
24 Constitution and shall go into immediate effect. The facts  
25 constituting the necessity are:

26 In order to ensure that minors are ~~no longer~~ *not* placed  
27 in a position of danger of injury or death as a result of  
28 being used as an informant, it is necessary that this act  
29 take effect immediately.

