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SB-1052 Custodial interrogation: juveniles. (2015-2016)

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ENROLLED SEPTEMBER 02, 2016
PASSED IN SENATE AUGUST 30, 2016
PASSED IN ASSEMBLY AUGUST 23, 2016
AMENDED IN ASSEMBLY AUGUST 18, 2016
AMENDED IN ASSEMBLY AUGUST 01, 2016
AMENDED IN ASSEMBLY JUNE 16, 2016
AMENDED IN SENATE MAY 31, 2016
AMENDED IN SENATE MARCH 28, 2016

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

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, 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. The bill would require the court to consider the effect of the failure to comply with the above-specified 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 Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

(c) For these reasons, in situations of custodial interrogation and prior to making a waiver of rights under *Miranda v. Arizona* (1966) 384 U.S. 436, youth under 18 years of age should consult with legal counsel to assist in their understanding of their rights and the consequences of waiving those rights.

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

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

(b) The court shall, in adjudicating the admissibility of statements of a youth under 18 years of age made during or after a custodial interrogation, consider the effect of failure to comply with subdivision (a).

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

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

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

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