

DRAFT

City Attorney's Office

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OFFICE OF THE CITY CLERK
OAKLAND

17 MAY 18 PM 4:01

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER DAN KALB

RESOLUTION IN SUPPORT OF SENATE BILL 395, BY STATE SENATORS RICARDO LARA AND HOLLY MITCHELL, THAT WOULD REQUIRE ANY YOUTH UNDER THE AGE OF EIGHTEEN TO CONSULT WITH A QUALIFIED COUNSEL PRIOR TO CUSTODIAL INTERROGATION OR ANY WAIVING OF SPECIFIED RIGHTS.

WHEREAS, custodial interrogation of an individual by the state requires that the individual be advised of their rights and make a knowing, intelligent, and voluntary waiver of those rights before the interrogation proceeds; and

WHEREAS, recent advances in cognitive science research have shown that the capacity of youth to grasp legal rights is less than that of an adult. This is especially true for very young, developmentally disabled, or cognitively delayed children, and for those with mental health problems; and

WHEREAS, our society recognizes that children are especially vulnerable in legal situations, which is why youth cannot buy alcohol and cigarettes or enter into legal contracts, yet some our state's laws do not recognize their limited capacity to understand their Miranda rights; and

WHEREAS, the United States Supreme Court recognizes that youth generally are less mature than adults, lacking the experience, perspective and judgment to recognize and avoid choices that could be detrimental to them; and

WHEREAS, SB 395 is supported by the National Center for Youth Law, Alliance for Boys and Men of Color, California Public Defenders Association, ACLU of California, Children's Defense Fund, Ella Baker Center for Human Rights among others; and

WHEREAS, that California Senate Bill 395 will require youth under 18 to consult with legal counsel prior to waiving their rights and thus preserve a youth's constitutional rights. By ensuring that our youth understand their rights, this bill will help to ensure that the outcome of interrogations is just and lawful, and create greater trust, accountability, and due process for all; now, therefore, be it

RESOLVED: that the Oakland City Council supports senate bill 395, (Senators Lara and Mitchell), that would require any youth under the age of

eighteen to consult with a qualified counsel prior to custodial interrogation or any waiving of specified rights; and be it

FURTHER RESOLVED: That the City Administrator is directed to forward a copy of this enacted Resolution to state legislative elected officials representing Oakland, the authors of this legislation, Governor Jerry Brown, and to the lobbyist for the City of Oakland to advocate for passage of SB 395.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES –

NOES –

ABSENT –

ABSTENTION –

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the
City of Oakland, California

SENATOR RICARDO LARA

LEGISLATIVE FACT SHEET

Miranda Rights for Youth Senate Bill 395

Summary:

SB 395 will require youth under the age of 18 to consult with legal counsel before they waive their constitutional rights.

Background:

Currently in California, children—no matter how young— can waive their *Miranda* rights. When law enforcement conducts a custodial interrogation, they are required to recite basic constitutional rights to the individual, known as *Miranda* rights, and secure a waiver of those rights before proceeding. The waiver must be voluntarily, knowingly, and intelligently made. *Miranda* waivers by juveniles present distinct issues. Recent advances in cognitive science research have shown that the capacity of youth to grasp legal rights is less than that of an adult. This is especially true for very young, developmentally disabled, or cognitively delayed children, and for those with mental health problems.

Although existing law assures counsel for youth accused of crimes, the law does not require law enforcement to recognize that youth are different from adults. It is critical to ensure a youth understands their rights before waiving them.

Recently an appellate court held that a 10-year-old boy made a voluntary, knowing, and intelligent waiver of his *Miranda* rights. When the police asked if he understood the right to remain silent, he replied, "Yes, that means that I have the right to stay calm." The California Supreme Court declined to review the lower court's decision. Several justices disagreed, and in his dissenting statement Justice Liu noted that many states have taken legislative action on this issue and suggests that California should as well, stating that state law on juvenile waivers is a half-century old and, "predates by several decades the growing body of scientific research that the [U.S. Supreme Court] has repeatedly found relevant in assessing differences in mental capabilities between children and adults."

Studies have demonstrated youth often do not fully comprehend the consequences of waiving their rights. They are also much more likely than adults to waive their rights and to confess to crimes they did not commit. A recent study of exonerations found that 13 percent of adults had falsely confessed, compared to 42 percent of juveniles. The ramifications for both the individual and society of false confessions are far-reaching.

Problem:

Our society recognizes that children are especially vulnerable in legal situations, which is why youth cannot buy alcohol and cigarettes or enter into legal contracts, yet our state's laws do not recognize their diminished capacity to understand their *Miranda* rights. Other states have acknowledged the difference between youth and adults and passed laws providing safeguards for youth. Unfortunately, for juveniles in California, our justice system only provides *Miranda* rights in theory. In practice the system is flawed and can and does result in serious disproportionate negative consequences for youth who have the same rights as adults, but do not have the same capacity to understand their rights or the consequences of waiving them.

Solution:

SB 395 will require youth under 18 to consult with counsel prior to waving their rights. This will preserve youth's constitutional rights and protect the integrity of our criminal justice system. This bill will bring California's law in line with modern science. By ensuring youth understand their rights, we ensure the outcome of interrogations are just and lawful, and create greater trust, accountability, and due process for all.

Contact:

Megan Baier 916-651-4033



FILED
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Introduced by Senators Lara and Mitchell

February 15, 2017

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

LEGISLATIVE COUNSEL'S DIGEST

SB 395, as introduced, 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.
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,
32 and disregard long-term consequences of important decisions.
33 (See, e.g., Steinberg et al., “Age Differences in Future Orientation
34 and Delay Discounting”; William Gardner and Janna Herman,
35 “Adolescent’s AIDS Risk Taking: A Rational Choice Perspective,”
36 in *Adolescents in the AIDS Epidemic*, ed. William Gardner et al.
37 (San Francisco: Jossey Bass, 1990), pp. 17, 25-26; Marty Beyer,
38 “Recognizing the Child in the Delinquent,” *Kentucky Child Rights*

1 Journal, vol. 7 (Summer 1999), pp. 16-17; National Juvenile Justice
2 Network, "Using Adolescent Brain Research to Inform Policy: A
3 Guide for Juvenile Justice Advocates," September 2012, pp. 1-2;
4 Catherine C. Lewis, "How Adolescents Approach Decisions:
5 Changes over Grades Seven to Twelve and Policy Implications,"
6 *Child Development*, vol. 52 (1981), pp. 538, 541-42). Addressing
7 the specific context of police interrogation, the United States
8 Supreme Court observed that events that "would leave a man cold
9 and unimpressed can overawe and overwhelm a lad in his early
10 teens" (*Haley v. Ohio*, (1948) 332 U.S. 596 (plurality opinion)),
11 and noted that "'no matter how sophisticated,' a juvenile subject
12 of police interrogation 'cannot be compared' to an adult subject"
13 (*J.D.B.*, 131 S.Ct. at 2394, quoting *Gallegos v. Colorado* (1962)
14 370 U.S. 49, 54). The law enforcement community now widely
15 accepts what science and the courts have recognized: Children and
16 adolescents are much more vulnerable to psychologically coercive
17 interrogations and in other dealings with the police than resilient
18 adults experienced with the criminal justice system.

19 (c) For these reasons, in situations of custodial interrogation
20 and prior to making a waiver of rights under *Miranda v. Arizona*
21 (1966) 384 U.S. 436, youth under 18 years of age should consult
22 with legal counsel to assist in their understanding of their rights
23 and the consequences of waiving those rights.

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

26 625.6. (a) Prior to a custodial interrogation, and before the
27 waiver of any Miranda rights, a youth under 18 years of age shall
28 consult with legal counsel in person, by telephone, or by video
29 conference. The consultation may not be waived.

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

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

37 (1) The officer who questioned the suspect reasonably believed
38 the information he or she sought was necessary to protect life or
39 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 (d) This section does not require a probation officer to comply
- 4 with subdivision (a) in the normal performance of his or her duties
- 5 under Sections 625, 627.5, or 628.

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