SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	SB 1052	**Hearing Date:**	April 19, 2016
Author:	Lara		
Version:	March 28, 2016		
Urgency:	No	**Fiscal:**	Yes
Consultant:	MK		

Subject: ***Custodial Interrogation: Juveniles***

HISTORY

Source: Human Rights Watch

Prior Legislation: None

Support: Asian Law Alliance; California Alliance for Youth and Community Justice; California Attorneys for Criminal Justice; California Catholic Conference; California Public Defenders Association; Children's Defense Fund – California; Center on Juvenile and Criminal Justice; Center on Wrongful Convictions of Youth; Children's Defense Fund-California; Coalition for Justice and Accountability; Ella Baker Center for Human Rights; First Focus Campaign for Children; Friends Committee on Legislation of California; Justice Not Jails; Law Office of Jeremy D. Blank; Legal Services for Prisoners with Children; National Center for Youth Law; National Council on Crime and Delinquency; National Lawyers Guild; Pacific Juvenile Defender Center; Services, Immigrant Rights & Education Network; The Peace and Justice Commission of St. Mark Presbyterian Church; San Jose/Silicon Valley NAACP; Services, Immigrant Rights, and Education Network; Silicon Valley De-Bug; SFChildrenslaw; Youth Justice Coalition; 2 individuals

Opposition: California District Attorneys Association; California State Sheriffs' Association

PURPOSE

The purpose of this bill is to require that a youth under the age of 18 consult with counsel prior to a custodial interrogation and before waiving any specified rights.

Existing law provides that a peace officer may, without a warrant, take into temporary custody a minor. (Welfare and Institutions Code § 625)

Existing law provides that in any case where a minor is taken into temporary custody on the ground that there is reasonable cause for believing that such minor will be adjudged a ward of the court or charged with a criminal action, or that he has violated an order of the juvenile court or escaped from any commitment ordered by the juvenile court, the officer shall advise such minor that anything he says can be used against him and shall advise him of his constitutional

rights, including his right to remain silent, his right to counsel present during any interrogation, and his right to have counsel appointed if he is unable to afford counsel. (Welfare and Institutions Code § 625 (c))

Existing law provides that when a minor is taken into a place of confinement the minor shall be advised that he has the right to make at least two telephone calls, one completed to a parent or guardian, responsible adult or employer and one to an attorney. (Welfare and Institutions Code § 627)

This bill provides that prior to a custodial interrogation and before the waiver of any Miranda rights, a youth under 18 years of age shall consult with counsel.

This bill provides that the consultation with counsel shall not be waived.

This bill provides that if a custodial interrogation of a minor under 18 years of age occurs prior to the youth consulting with counsel, all of the following remedies shall be granted as a relief for noncompliance:

- The court shall, in adjudicating the admissibility of statements of youth under 18 years of age made during or after a custodial interrogation, consider the effect of failure to comply with the consultation to counsel requirement and factors set in subdivision (c) of the section.
- Provided the evidence is otherwise admissible, the failure to comply with the consultation with counsel requirement shall be admissible in support of claims that the youth's statement was obtained in violation of his or her *Miranda* rights, was involuntary, or is unreliable.
- If the court finds that youth under 18 years of age was subject to a custodial interrogation in violation of the consultation with counsel requirement the court shall provide the jury or the trier of fact with the specified jury instruction.

This bill provides that in determining whether an admission, statement, or confession made by a youth under 18 years of age was voluntarily, knowingly, and intelligently made, the court shall consider all circumstances surrounding the statement, including, but not limited to all of the following:

- The youth's age, maturity, intellectual capacity, education level, and physical, mental and emotional health.
- The capacity of the youth to understand *Miranda* rights, including the nature of the privilege against self-incrimination under the United States and California Constitutions, the consequences of waiving those rights and privileges, whether the youth perceived the adversarial nature of the situation, and whether the youth was aware of how counsel could assist the youth during interrogation.
- The manner in which the youth was advised of his or her rights, and whether the rights specified in the *Miranda* rule were minimized by law enforcement.
- The youth's reading and comprehension level and his or her understanding of *Miranda* rights given by law enforcement.
- Whether the youth asked to speak with a parent or other adult at any time while in law enforcement custody.
- Whether law enforcement offered to allow the youth to consult with a parent or guardian prior to the interrogation, or whether law enforcement took steps to prevent a parent or guardian from speaking to the youth prior to interrogation.

- Whether the youth had been interrogated previously by law enforcement and whether the youth invoked his or her *Miranda* rights previously.
- Whether the youth requested to leave.
- Whether law enforcement either by express or implied conduct intimated that the youth could leave after speaking, or if any other promises of leniency were made.
- The manner in which the interrogation occurred, including length of time, method of interrogation, location, number of individuals present, the treatment of the youth by law enforcement, the tone and manner of questioning during the interrogation, whether law enforcement personnel were in uniform, if ruses were used, if express or implied threats were made, and if applicable the failure to comply with the requirement that the juvenile receive two phone calls, one to a parent or guardian and one to an attorney.
- Whether the youth consulted with counsel prior to waiver.
- Any other relevant evidence.

This bill provides that the Judicial Council shall develop an instruction advising that statements made in a custodial interrogation in violation of this bill shall be viewed with caution.

This bill provides that for purposes of this bill "Miranda rights" refers to the rights specified in Welfare and Institutions Code Section 625(c).

This bill makes a number of uncodified legislative declarations and findings regarding developmental and neurological sciences as it pertains to the interrogation of a minor.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014

Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

> 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.
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> Although existing law assures counsel for youth accused of crimes, the law does not require law enforcement and the courts to recognize that youth are different from adults. It is criticalto ensure a youth understands their rights before waving them and courts should have clear criteria for evaluating the validity of waivers.
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> 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 suggests the Legislature should address the issue, stating that California 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."

SB 1052 will require youth under the age of 18 to consult with legal counsel before they waive their constitutional rights. The bill also provides guidance for courts in determining whether a youth's *Miranda* waiver was made in a voluntary, knowing, and intelligent manner as required under existing law.

2. *Miranda v. Arizona*

In *Miranda v. Arizona* (1966) 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, the Court (5-4) decided four cases (*Miranda v. Arizona*, *Vignera v. New York*, *Westover v. United States*, and *California v. Stewart*) and imposed new constitutional requirements for custodial police interrogation, beyond those laid down [previously].

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The Court's decision may be "briefly stated" as follows: "[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned." (86 S.Ct. 1612, 16 L.Ed.2d 706.) (5 Witkin *Cal. Crim. Law Crim Trial* § 107**)**

3. Minors and *Miranda*

Under this bill, a youth under 18 years of age would be required to consult with counsel prior to waiving his or her rights under *Miranda*. The right to counsel cannot be waived.

If the requirement that the minor consult with counsel before waiving his or her rights is not met the court shall weigh specified factors in determining whether it is admissible. If it is admitted then a jury instruction, as created by Judicial Council should be read that will advise that statements made in a custodial interrogation in violation of this bill should be viewed with

caution. The bill further states that the fact that the requirement in this bill was not complied with should be admissible in arguments challenging any statements made by the minor.

4. American Academy of Child and Adolescent Psychiatry

In a Policy Statement dated March 7, 2013 the American Academy of Child and Adolescent Psychiatry expressed its beliefs that juveniles should have counsel present when interrogated by law enforcement:

> Research has demonstrated that brain development continues throughout adolescence and into early adulthood. The frontal lobes, responsible for mature thought, reasoning and judgment, develop last. Adolescents use their brains in a fundamentally different manner than adults. They are more likely to act on impulse, without fully considering the consequences of their decisions or actions.
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> The Supreme Court has recognized these biological and developmental differences in their recent decisions on the juvenile death penalty, juvenile life without parole and the interrogations of juvenile suspects. In particular, the Supreme Court has recognized that there is a heightened risk that juvenile suspects will falsely confess when pressured by police during the interrogation process. Research also demonstrates that when in police custody, many juveniles do not fully understand or appreciate their rights, options or alternatives.
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> Accordingly, the American Academy of Child and Adolescent Psychiatry believes that juveniles should have an attorney present during questioning by police or other law enforcement agencies. While the Academy believes that juveniles should have a right to consult with parents prior to and during questioning, parental presence alone may not be sufficient to protect juvenile suspects. Moreover, many parents may not be competent to advise their children on whether to speak to the police and may also be persuaded that cooperation with the police will bring leniency. There are numerous cases of juveniles who have falsely confessed with their parents present during questioning…. [citations omitted] (https://www.aacap.org/aacap/policy_statements/2013/Interviewing_and_Interrogating_Juvenile_Suspects.aspx)

5. Support

The National Center for Youth Law supports this bill stating:

> Currently, youth in California can waive their Miranda rights on their own, as long as the waiver is made in a voluntary, knowing, and intelligent manner. Yet research demonstrates that young people often fail to comprehend the meaning of Miranda rights. Even more troubling is the fact that young people are unlikely to appreciate the consequences of giving up those rights. They are also more likely than adults to waive their rights and confess to crimes they did not commit.
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> Widely accepted research concludes that young people have less capacity to exercise mature judgement and are more likely than adults to disregard the long-term consequences of their behavior. Over the last 10 years, the United States and California Supreme Courts, recognizing that developmental abilities of youth are

> relevant to criminal culpability and the capacity to understand procedures of the criminal justice system, have enunciated a new jurisprudence grounded in this research.
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> Moreover, courts have noted that young people are more vulnerable than adults to interrogation and have a limited understanding of the criminal justice system. These problems are amplified for youth who are very young, or who have developmental disabilities, cognitive delays or mental health challenges. A recent study of exonerations found that 42 percent of juveniles had falsely confessed as compared to just 13 percent of adults. The ramifications for both the individual and society of soliciting unreliable evidence and false confessions are far-reaching….
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> People who work closely with youth and help them navigate legal decision-making know that a young person can understand the literal meanings of Miranda rights, but fail to appreciate the implications of giving up those rights. Some youth are persuaded to give statements because they believe doing so will reduce the likelihood of "getting into trouble." They are left feeling betrayed by interrogation tactics permitted and perhaps appropriate for adult suspects, but overwhelming for youth. These experiences can leave youth traumatized for years and harm trust in law enforcement and the justice system.

6. Opposition

According to the California District Attorneys Association:

> We believe that the procedure sought by this bill would frustrate criminal investigations and cast doubt upon voluntary confessions introduced at trial.
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> As subdivision (c) of Section 1 of the bill notes, juveniles already receive a more generous interpretation of *Miranda* rights, in that the court must take the juvenile's age, education, and immaturity into account when considering whether there has been a valid *Miranda* waiver. (*Fare v. Michael C.* (1979) 442 U.S. 707, 725).
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> SB 1052 would expand those protections even further, by mandating a consultation between a juvenile and an attorney – a consultation that the juvenile is prohibited from waiving. Failure to follow this procedure would result in a host of sanctions designed to undermine the credibility of any statements made by the juvenile, regardless of whether any actual coercion took place.
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> To illustrate one such problem with this approach, consider the following example. A juvenile is arrested, and properly advised of his *Miranda* rights. While in custody, and being transported to the police station, he makes statements incriminating himself, or perhaps even confesses to the crime for which he has been arrested. Upon reaching the police station, the juvenile consults with counsel, per the mandate in SB 1052.
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> According to the language of the bill, this would be a "failure to comply" since the statement was made in a custodial setting prior to the juvenile consulting with counsel. Under proposed Welfare & Institutions Code section 625.6(b)(2), this

failure" would be admissible in support of a claim that the statement was made in violation of the juvenile's *Miranda* rights, was involuntary, or is unreliable. That, of course, is simply untrue. There was no violation of the juvenile's *Miranda* rights, as he was properly advised of them, and the court is already required to consider the additional factors pertaining to juveniles under *Fare*. The only "right" that was arguably violated was this new statutory right under WIC 625.6 – and even then, the arresting officers attempted to comply at the first available opportunity. Unless every officer is going to have a defense attorney at his or her side when taking juveniles into custody, it's unclear how this would work in practice.

Given the additional protections in place to guard against unlawfully obtained juvenile confessions, we believe this bill creates an unworkable and costly process that would frustrate our criminal justice system.

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