SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	SB 395	**Hearing Date:**	March 21, 2017
Author:	Lara		
Version:	February 15, 2017		
Urgency:	No	**Fiscal:**	No
Consultant:	SJ		

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

HISTORY

Source: California Attorneys for Criminal Justice
Human Rights Watch
National Center for Youth Law
Silicon Valley De-Bug
Youth Justice Coalition

Prior Legislation: SB 1052 (Lara) – 2015-2016, vetoed

Support: Alliance for Boys and Men of Color; Anti-Recidivism Coalition; Asian Law Alliance; California Alliance for Youth and Community Justice; California Catholic Conference; California Public Defenders Association; Center on Juvenile and Criminal Justice; Children's Defense Fund; Children's Law Center of California; Coalition for Justice and Accountability; Community Development Technologies Center; Felony Murder Elimination Project; Healing Dialogue and Action; John Burton Advocates for Youth; Pacific Juvenile Defender Center; Prison Law Office; Root & Rebound; TGI Justice Project; USC Post-Conviction Justice Project of the USC Gould School of Law; W. Haywood Burns Institute; several individuals

Opposition: California District Attorneys Association; California Police Chiefs 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 is required to advise such minor that anything he says can be used against him and 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 requires 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 requires that the consultation with counsel cannot be waived.

This bill provides that consultation with counsel may be in person, or by telephone or video conference.

This bill requires that the court, 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.

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

a) 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.
b) The officer's questions were limited to those questions that were reasonably necessary to obtain this information.

This bill does not require a probation officer to comply with the consultation with counsel requirement in the normal performance of his or her duties.

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.

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.
> 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 critical to ensure a youth understands their rights before waiving them and courts should have clear criteria for evaluating the validity of waivers.

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 suggested that 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 395 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* and Its Application to Minors

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**)**

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 must consider the effect of the failure to comply with the consultation of counsel requirement in determining the admissibility of the statements of the minor made during or after a custodial interrogation.

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. SB 1052 Governor's Veto Message

Last year the Legislature approved SB 1052 (Lara), which also addressed the custodial interrogation of juveniles. Governor Brown vetoed SB 1052 stating:

> This bill would require – in almost all cases – that a youth under 18 must consult an attorney before a custodial interrogation begins.
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> This bill presents profoundly important questions involving the constitutional right not to incriminate oneself and the ability of the police to interrogate juveniles. Ever since 1966,

the rule has been that interrogations of criminal suspects be preceded by the *Miranda* warning of the right to remain silent and the right to have an attorney.

In more cases than not, both adult and juvenile suspects waive these rights and go on to answer an investigator's questions. Courts uphold these "waivers" of rights as long as the waiver is knowing and voluntary. It is rare for a court to invalidate such a waiver.

Recent studies, however, argue that juveniles are more vulnerable than adults and easily succumb to police pressure to talk instead of remaining silent. Other studies show a much higher percentage of false confessions in the case of juveniles.

On the other hand, in countless cases, police investigators solve very serious crimes through questioning and the resulting admissions or statements that follow.

These competing realities raise difficult and troubling issues and that is why I have consulted widely to gain a better understanding of what is at stake. I have spoken to juvenile judges, police investigators, public defenders, prosecutors and the proponents of this bill. I have also read several research studies cited by the proponents and the most recent cases dealing with juvenile confessions.

After carefully considering all the above, I am not prepared to put into law SB 1052's categorical requirement that juveniles consult an attorney before waiving their *Miranda* rights. Frankly, we need a much fuller understanding of the ramifications of this measure.

In the coming year, I will work with proponents, law enforcement and other interested parties to fashion reforms that protect public safety and constitutional rights. There is much to be done.

6. 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.
> Widely accepted research concludes that young people have less capacity to exercise mature judgment 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. 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.

7. Opposition

According to the California State Sheriffs' Association:

> Our overarching concern with this bill is that it goes far beyond what existing case law requires as it relates to juveniles and their *Miranda* rights. For nearly 40 years, U.S. Supreme Court case law has held that "a court must take into account the special concerns that are present when a young person is involved, including a child or youth's limited experience, education and immature judgment." (*Fare v. Michael C.* (1979) 442 U.S. 707, 725)
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> SB 395 exceeds that standard, however, and requires minors to consult with counsel prior to a custodial interrogation and before waiving Miranda rights, and provides that this consultation cannot be waived. The bill raises questions including who will serve as this counsel, what entity will pay for it, and why is being mandated even in cases before a person is arrested? Law enforcement may simply want to talk to a minor, and even if the parent or guardian is notified in advance, this discussion would have to wait until counsel could consult with the minor if there was a chance that the interaction would fall under the bill's undefined umbrella of a custodial interrogation.
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> SB 395 will cast doubt on an otherwise truthful statement that is called into question simply because a minor had not consulted with counsel before choosing to waive *Miranda* rights.

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