



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

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To: Superintendents, Member School Districts (K-12)

**From: Carl D. Corbin *CDC*
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**Subject: Police Interrogation of Student 15 Years of Age or Younger
Memo No. 02-2018 - REVISED**

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Effective January 1, 2018, Senate Bill (“SB”) 395¹, will require that prior to an interrogation by a law enforcement officer (including a school resource officer) and prior to a waiver of any Miranda² rights, a student 15 years of age or younger must be allowed to consult³ with legal counsel and the consultation may not be waived. Failure to comply with the law may affect the admissibility of the student’s statements at a criminal hearing.

There is an exception for statements made by the student without the consultation with an attorney if the law enforcement officer who questioned the student reasonably believed the information he or she sought was necessary to protect life or property from an imminent threat and the officer’s questions were limited to those questions that were reasonably necessary to obtain that information.

Please note that this law does not apply to school administrators questioning a student and using the information for school related disciplinary purposes such as expulsion.

However, this law will apply if a school administrator contacts a law enforcement officer (including a school resource officer) and the student is questioned at school by the officer. However, any failure to have an attorney consultation with the student will not affect use of the information obtained for school discipline purposes.

Please find included a copy of SB 395.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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¹ Codified at Welfare and Institutions Code section 625.6.

² *Miranda v. Arizona* (U.S. 1966) 384 U.S. 436.

³ The consultation with the attorney may be in person, by telephone, or by video conference.

Senate Bill No. 395

CHAPTER 681

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

[Approved by Governor October 11, 2017. Filed with
Secretary of State October 11, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 395, 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 the right to have counsel present during any interrogation, and that he or she has the right to have counsel appointed if he or she is unable to afford counsel.

This bill would require that a youth 15 years of age or younger 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 prohibit a waiver of the consultation. 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 15 years of age or younger made during or after a custodial interrogation. The bill would clarify that these provisions do not apply to the admissibility of statements of a youth 15 years of age or younger if certain criteria are met.

This bill would require the Governor, or his or designee, to convene a panel of at least 7 experts, as specified, no later than January 1, 2023. The bill would require the panel to review, and to examine the effects and outcomes related to, the implementation of the above-described requirements, as specified, and to provide, no later than April 1, 2024, certain information to the Legislature and the Governor.

This bill would repeal these requirements on January 1, 2025.

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 Research Council (2013), page 96, and Chapter 4). As recognized by the United States Supreme Court, children “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 voluntary 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,” *Child Development*, vol. 80 (2009), pp. 28-44; William Gardner and Janna Herman, “Adolescents’ 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 Children’s 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, 599 (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 2403, 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 15 years of age or younger 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 15 years of age or younger 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 15 years of age or younger if both of the following criteria are met:

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

(2) The officer's questions were limited to those questions that were reasonably necessary to obtain that 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 Section 625, 627.5, or 628.

(e) (1) The Governor, or his or her designee, shall convene a panel of at least seven experts, including all of the following:

(A) A representative of the California Public Defenders Association.

(B) A representative of the California District Attorneys Association.

(C) A representative of a statewide association representing law enforcement.

(D) A representative of the judiciary.

(E) A member of the public possessing expertise and experience in any or all of the following:

(i) The juvenile delinquency or dependency systems.

(ii) Child development or special needs children.

(iii) The representation of children in juvenile court.

(F) A member of the public who, as a youth, was involved in the criminal justice system.

(G) A criminologist with experience in interpreting crime data.

(2) (A) The panel shall be convened no later than January 1, 2023, and shall review the implementation of this section and examine the effects and outcomes related to the implementation of this section, including, but not limited to, the appropriate age of youth to whom this section should apply.

(B) No later than April 1, 2024, the panel shall provide information to the Legislature and the Governor, including, but not limited to, relevant data on the effects and outcomes associated with the implementation of this section. A report submitted to the Legislature pursuant to this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.

(3) Members of the panel shall serve without compensation, but may be reimbursed for actual and necessary expenses incurred in the performance of their duties on the panel.

(f) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.