

Senate Bill No. 203

Passed the Senate August 31, 2020

Secretary of the Senate

Passed the Assembly August 30, 2020

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2020, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

SB 203, Bradford. Juveniles: custodial interrogation.

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 the minor says can be used against the minor, that the minor has the right to remain silent, that the minor has the right to have counsel present during any interrogation, and that the minor has the right to have counsel appointed if the minor is unable to afford counsel. Existing law requires, until January 1, 2025, 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. Existing law directs a court deciding the admissibility of statements made by a youth 15 years of age or younger during or after a custodial interrogation to consider the effects of failing to provide counsel before the custodial interrogation. Existing law directs the Governor to convene a panel of experts to examine the effects and outcomes of these provisions, including the appropriate age of youth to whom these provisions should apply.

This bill would instead apply these provisions to a youth 17 years of age or younger, and would indefinitely extend the operation of these provisions. The bill would direct a court to consider any willful failure of a law enforcement officer to allow a youth 17 years of age or younger to speak with counsel before a custodial interrogation in determining the credibility of that law enforcement officer, and would eliminate the above-specified provisions requiring the Governor to convene a panel of experts.

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 brain development continues into adulthood, and that the human brain undergoes significant changes throughout adolescence and well into young adulthood.

(b) The United States Supreme Court has recognized the following:

(1) Children are generally less mature and responsible than adults, often lacking the experience, perspective, and judgment to recognize and avoid choices that could be harmful to them.

(2) Children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.

(3) Children are generally more vulnerable to outside influences than adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it.

(c) (1) Custodial interrogation of an individual by the state requires that the individual be advised of the individual's rights and make a knowing, intelligent, and voluntary waiver of those rights before the interrogation proceeds.

(2) Youth under 18 years of age have a lesser ability than adults to comprehend the meaning of their rights and the consequences of waiving those rights.

(3) 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.

(d) Addressing the specific context of police interrogation, the United States Supreme Court observed that events that would have a minimal impact on an adult can overwhelm an early teen child, noting that no matter how sophisticated the child may be, the interrogation of a child cannot be compared to the interrogation of an adult.

(e) The law enforcement community now widely accepts what science and the courts have recognized: that children and adolescents are much more vulnerable to psychologically coercive interrogations and other psychologically coercive dealings with

the police than resilient adults experienced with the criminal justice system.

(f) 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, a 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 of the Welfare and Institutions Code is amended to read:

625.6. (a) Prior to a custodial interrogation, and before the waiver of any Miranda rights, a youth 17 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 17 years of age or younger made during or after a custodial interrogation, consider the effect of failure to comply with subdivision (a) and, additionally, shall consider any willful violation of subdivision (a) in determining the credibility of a law enforcement officer under Section 780 of the Evidence Code.

(c) This section does not apply to the admissibility of statements of a youth 17 years of age or younger if both of the following criteria are met:

(1) The officer who questioned the youth reasonably believed the information the officer 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 the probation officer's duties under Section 625, 627.5, or 628.

Approved _____, 2020

Governor