

Date of Hearing: March 17, 2026  
Counsel: Kimberly Horiuchi

## ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 1905 (Schultz) – As Introduced February 12, 2026

**SUMMARY:** Prohibits a law enforcement officer or individuals working in collaboration with or acting as agents of law enforcement from seeking statements or information while working undercover from a person who was 17 years of age or younger during the commission of crime and who is in custody. Specifically, **this bill:**

- 1) States a law enforcement officer may not seek to obtain any information or statements from a person when both of the following apply:
  - a) The person was 17 years of age or younger at the time the crime was committed.
  - b) The person is in custody, and the information or statements are sought by law enforcement officers working undercover or by individuals working in collaboration with, or acting as an agent of, law enforcement.
- 2) Requires the court to consider the effect of any willful violation of law enforcement in obtaining or seeking a statement from a juvenile while in custody and in determination of the officer's credibility.

**EXISTING LAW:**

- 1) States that persons may not be compelled in a criminal case to be a witness against themselves. (Cal. Const., Art. I, Sec. 15.)
- 2) Requires, 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. Prohibits waiver of the consultation. (Welf. and Inst. Code, § 625.6, subd. (a).)
- 3) Requires the court, in adjudicating the admissibility of statements of a youth 17 years of age or younger made during or after a custodial interrogation, to consider the effect of failure to comply with the consultation requirement, as well as any willful violation in determining the credibility of a law enforcement officer. (Welf. and Inst. Code, § 625.6, subd. (b).)
- 4) Specifies that the consultation requirement 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:
  - a) 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; and

- b) The officer's questions were limited to those questions that were reasonably necessary to obtain that information. (Welf. and Inst. Code, § 625.6, subd. (c).)
- 5) Exempts probation officers from complying with the consultation requirement in their normal course of duties, as specified. (Welf. and Inst. Code, § 625.6, subd. (d).)
- 6) Provides that when a minor is taken into a place of confinement the minor shall be advised of the right to make at least two telephone calls, one completed to a parent or guardian, or a responsible relative, or employer and one to an attorney. (Welf. & Inst. Code, § 627.)
- 7) Requires the custodial interrogation of a juvenile suspected of committing murder to be electronically recorded in its entirety. (Welf. & Inst. Code, § 626.8, see also Pen. Code, § 859.5.)
- 8) States that when a minor is taken into temporary custody before a probation officer, and it is alleged that the minor has violated a law defining a crime, the probation officer must advise the minor that anything the minor says can be used against him, and shall advise the minor of their constitutional rights, including the right to remain silent and the right to counsel. (Welf. & Inst. Code, § 627.5.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Young people are uniquely vulnerable during custodial interactions with law enforcement. Research and case experience consistently demonstrate that juveniles are more susceptible to pressure, manipulation, and deception, particularly when they may be unaware they are speaking with someone acting on behalf of law enforcement. California has taken important steps to safeguard youth during interrogations, yet gaps remain when undercover tactics are used in custodial settings. Without clear statutory limits, courts are often left to determine after the fact whether statements were obtained in a manner consistent with constitutional protections. Recent appellate guidance underscores the risks associated with these practices. Clear rules help ensure that statements relied upon in court are both credible and lawfully obtained, while reducing costly litigation over admissibility.

"AB 1905 strengthens protections for young people in custody by prohibiting law enforcement from using undercover officers or agents to obtain statements from individuals who were 17 years of age or younger at the time of alleged offense. By establishing clear guardrails around custodial questioning, the bill promotes fairness, reduces the risk of unreliable statements, and supports the integrity of the justice system."

- 2) **Miranda v. Arizona:** Virtually all Americans are familiar with *Miranda* given its ubiquity in film and television. (*Miranda v. Arizona* (1966) 384 U.S. 436 (hereinafter *Miranda*.) In *Miranda*, the United States Supreme Court held that the prosecution may not use statements, whether exculpatory or inculpatory, stemming from **custodial interrogation** of the defendant unless it demonstrates that procedural safeguards, effective to secure the privilege against self-incrimination, were used.

In the absence of other fully effective means to inform accused persons of their right to silence and to ensure a continuous opportunity to exercise it, the following measures are required. Before any questioning begins, the accused must be warned that: (a) they have a right to remain silent; (b) any statement they make may be used as evidence against them in a court of law; (c) they have the a right to consult with an attorney and to have the attorney with them during interrogation; and (d) if they cannot afford an attorney, one will be appointed at public expense. (*Miranda, supra*, 384 U.S. at 444; See 2 California Criminal Defense Practice § 30.20.) The warnings need not be given in the precise language set forth in *Miranda*, so long as the warnings that are given satisfy the *Miranda* requirements when taken in their totality. (*Duckworth v. Eagan* (1989) 492 U.S. 195, 203–205.)

The obligation of a law enforcement officer to advise a person of their *Miranda* rights arises only before they are subjected to a custodial interrogation. (*People v. Mickey* (1991) 54 Cal.3d 612, 648-649.) A custodial interrogation is a “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.” (*Miranda, supra*, 384 U.S. at p. 444.)

In determining whether a custodial interrogation took place, the court makes two inquiries: (a) what were the circumstances surrounding the interrogation; and (b) given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. (*People v. Ochoa* (1998) 19 Cal.4th 353, 401-402.)

In *Rhode Island v. Innis* (1980) 466 U.S. 291, the U.S. Supreme Court clarified *Miranda* in cases where a defendant may make a statement outside of an ordinary interrogation. The Court held that an “interrogation” may be either “express questioning or its functional equivalent.” (*Innis*, 466 U.S. at 301-302.) “Interrogation” refers also “to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police.” (*Ibid.*)

However, “since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response.” (*Innis*, 466 U.S. at 302.)

- 3) **Illinois v. Perkins:** In an extension of the Court’s holding in *Miranda*, the U.S. Supreme Court ruled in *Illinois v. Perkins* (hereinafter “*Perkins*”) (1990) 496 U.S. 292, that while *Miranda* forbids coercion, it does not prohibit mere strategic deception by taking advantage of a suspect's misplaced trust in someone thought to be a fellow prisoner. (*Perkins*, 496 U.S. at 299.) In *Perkins*, two undercover agents posing as prisoners were placed in defendant's cell to investigate a murder. One agent asked defendant if he had ever killed anyone. Defendant then proceeded to describe the murder at length. The Court held *Miranda* warnings were not required because the discussion between the suspect and undercover agent did not implicate the concerns underlying *Miranda*, because there is no element of police coercion.

However, as part of a concurrence that formed the basis for the plurality judgment of the Court in *Perkins*, Justice Brennan focused on the fact that the defendant in *Perkins* had not

invoked his right to remain silent or to an attorney before making statements to the undercover police officer – only that the undercover officer was not required to issue the warning before attempting to illicit a statement. (See *Perkins*, 496 U.S. at 300, fn. \*; *Edwards v. Arizona* (1981) 451 U.S. 477, 482 (holding a waiver of rights must be knowing, intelligent, and voluntary).) However, if Perkins had invoked, the issue would be whether he waived that right.

In *People v. Orozco*, the court agreed that, even where the defendant invokes their right to counsel pursuant to *Miranda*, defendant’s statements to his girlfriend, who was acting as an agent of law enforcement, did not warrant exclusion because the statements were not made in a custodial setting and the element of coercion was not present. (*People v. Orozco* (2019) 32 Cal.App.5th 802, 813.) In that case, since the girlfriend was free to disclose any information the defendant shared, the fact that the police had contacted her about eliciting a statement from the defendant did not result in a *Miranda* violation.

In contrast to *Orozco*, however, the Court in *People v. Zapata* excluded the defendant’s statements which were elicited by sheriff deputies posing as inmates after Zapata invoked his right to counsel. (*People v. Zapata*, Feb. 10, 2026, No. D084024) \_\_\_ Cal.App.5th \_\_\_ [2026 Cal. App. LEXIS 88, at \*1].) In *Zapata*, the critical fact was that the defendant did not waive his rights and was then questioned by sheriff deputies posing as inmates in jail. (*Zapata*, 2026 Cal.App. LEXIS 88 at 16.) Therefore, Zapata’s *Miranda* rights were violated, and the statements were suppressed. However, the outcome may have been different if the police had used third parties to illicit a statement rather than doing it themselves.

*Perkins* operations, while useful in obtaining incriminating statements, can also constitute a violation of defendant’s rights against self-incrimination. This is especially true for juveniles. Young people are uniquely susceptible to influence, and coercion and the credibility of their statements should be viewed with skepticism. Young people may feel compelled to “brag” or make incriminating statements even when they did not commit the crime simply to appear “tough” or to impress the listener.

- 4) **Juvenile Interrogations:** Beginning in 2018, police were prohibited from questioning a child 15 years of age or younger without consulting with an attorney.<sup>1</sup> In the early 2000s, more and more courts and legislatures began recognizing that adolescent brain development affects a young person’s ability to make decisions. According to Harvard University, Center for Law, Brain, & Behavior, in its studies on Juvenile Justice & Adolescent Brain stated:

Scientists know that the adolescent brain is still developing, that it is highly subject to reward- and peer-influence, and that its rate of development varies widely across the population. They have developed basic tools that offer data with which to judge the potential for juvenile desistance, recidivism, and rehabilitation.

With its ability to examine the workings of the teenage brain, neuroscience is improving our understanding of adolescents,

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<sup>1</sup> See SB 395 (Lara), Chapter 681, Statutes of 2017.

and potentially, juvenile offenders. Through their window into the brain, neuroscientists understand, for example, that adolescents mature at markedly varied rates. The presumed trajectory of brain development, demonstrated in existing “bright line” age cut offs for voting, military service, and drinking, however, is not reflective of this variability in brain maturity. Similarly, neuroimaging research by CLBB faculty (Somerville, 2010) clarifies that it is teenagers’ heightened vulnerability to reward that drives risky behavior, contrary to longstanding beliefs that teenagers are unable to gauge risks. They can often recognize risks, but incomplete development of brain mechanisms related to modulation of impulsive behavior reduces their tendency to heed those risks.<sup>2</sup>

After mandating that juveniles be granted access to an attorney before questioning, the Legislature expanded application of the original statute to any person under the age of 18.<sup>3</sup> Welfare and Institutions Code section 625.6 states, in part:

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. (Welf. & Instit. Code, § 625.6, subd. (a).)

This statutory right is, of course, above and beyond what *Miranda* requires, since *Miranda* does not require the right to an attorney before any questioning, only that you be advised of your right to an attorney before being subjected to a “custodial interrogation.” *Miranda*, of course, mandates that any statements made in violation of *Miranda* must be excluded from trial since it is a violation of the 5th Amendment right against self-incrimination.

But, since the right of a juvenile to consult an attorney before even being advised of their rights is not required as a matter of constitutional law, it begs the question: what is the remedy if officers simply ignore the law and question a juvenile anyway? Must the statement be excluded?

Welfare and Institutions Code section 625.6, subdivision (b) states “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 the requirements of the statute.

The court in *In re Anthony L.* (2019) 43 Cal.App.5th 438, held that since the 2018 amendment did not specify exclusion as a remedy, it was not required.

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<sup>2</sup> White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys, and Policy Makers, Harvard University, Center for Juvenile Justice & Adolescent Brain, <https://clbb.mgh.harvard.edu/juvenilejustice/>

<sup>3</sup> SB 203 (Bradford), Chapter 335, Statutes of 2020.

Under Cal. Const., art. I, § 28, subd. (f)(2), relevant evidence may be excluded only if exclusion is required by the United States Constitution or a statute enacted by two-thirds of each house of the Legislature. Under California law, issues relating to the suppression of statements made during a custodial interrogation must be reviewed under federal constitutional standards. The Truth-in-Evidence provision supersedes statutorily created exclusionary rules. (*In re Anthony L.* (2019) 43 Cal.App.5th 438, 449.)

Since juveniles are not entitled to consult with an attorney before being read their rights as a matter of the 5th Amendment right against self-incrimination, exclusion is not mandatory. California's Truth-in-Evidence law mandates that all relevant evidence is admissible unless a contrary statute is passed by a two-thirds vote. This bill includes the same language. Therefore, it is presumed that since there is no stated exclusion in the bill, the courts will not be obligated to exclude a juvenile's statements if the officers just ignore the statute.

- 5) **Retroactivity:** Retroactivity<sup>4</sup> means whether a change in sentencing or constitutional interpretation should be applied to cases where the penalty may already be imposed and appeals exhausted. As a general matter, Penal Code section 3 states "No part of it (meaning the codes) is retroactive, unless expressly so declared." If retroactivity is not specified, the law is not applied retroactively.

However, beginning in 1965, *if a defendant's case is still pending at the time of the change and the law seeks to lessen a criminal penalty, they may be eligible for application of the new law.* (*In re Estrada* (1965) 63 Cal.2d 740, 746 (hereinafter "*Estrada*").) This is known as the "final judgement rule."

*Estrada* and other cases since 1965 have held "new laws that reduce the punishment for a crime are presumptively to be applied to defendants whose judgments are not yet final." (*People v. Conley* (2016) 63 Cal.4th 646, 656, citing *Estrada*, 63 Cal.2d at 746).)

The *Estrada* presumption [of retroactivity] stems from our understanding that when the Legislature determines a lesser punishment is appropriate for a particular offense or class of people, **it generally does not wish the previous, greater punishment—which it now deems too severe—to apply going forward. We presume the Legislature intends the reduced penalty to be used instead in all cases in which there is no judgment or a nonfinal one, and in which it is**

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<sup>4</sup> The California Supreme Court in *People v. Burgos* (2024) 16 Cal.5th 1 ruled that a defendant was not eligible for a bifurcated trial on a gang enhancement pursuant to Penal Code section 1109, as enacted in 2021 (Stats. 2021, ch. 699, § 5.) The Court correctly rejected *Estrada* as applied to the defendant's case because Penal Code section 1109 was not a criminal penalty reduction, but rather a "prophylactic rule of criminal procedure...." Accordingly, the general rule rejecting retroactivity unless otherwise specified by the statute controlled. In his concurrence, Justice Gorban asked the Legislature to consider the retroactive application of new laws, particularly where the statute is not a clear reduction of a criminal penalty, and to express their intent regarding whether any changes in that kind of legislation should be applied retroactively.

constitutionally permissible for the new law to control. (*People v. Padilla* (2022) 13 Cal.5th 152, 162, emphasis added.)

Finality is broadly construed by the courts but generally means where a criminal proceeding has not yet reached final disposition in the highest court authorized to review it. (*People v. Esquivel* (2021) 11 Cal.5th 671, 677.)

Recently, we held that “a convicted defendant who [was] placed on probation after imposition of sentence [was] suspended, and who [did] not timely appeal from the order granting probation, [could] take advantage of ameliorative statutory amendments that [took] effect during a later appeal from a judgment revoking probation and imposing sentence.” We reasoned that the defendant’s “prosecution had not been ‘reduced to final judgment at the time the ameliorative legislation was enacted as the criminal proceeding ... [meaning it] ha[d] not yet reached final disposition in the highest court authorized to review it (Internal citations omitted).” (*People v. Esquivel, supra*, 11 Cal.5th at 677, citing *People v. McKenzie* (2020) 9 Cal.5th 40, 43-45.)<sup>5</sup>

The proposed legislation is not a reduction in penalty, but rather a possible requirement of criminal procedure in the interrogation of juveniles. If a court determines that *Estrada* does not apply, the change will only apply prospectively.

If a defendant is pending appeal from, for example, a court’s refusal to suppress a juvenile’s statements in a *Perkins* operation, and *Estrada* is not applied, this legislative change would be of no use. If the author intends this change to be applicable to those pending appeal, it could specify that application should apply to those pending “final judgment” pursuant to *Estrada*.<sup>6</sup>

- 6) **Argument in Support:** According to the *California Innocence Coalition*, “Both anecdotal and numerical data supports the fact that juveniles are more susceptible to pressure, manipulation, and deception, especially when they are unaware they are speaking with someone acting on behalf of law enforcement. California legislation, although establishing some safeguards for young people during interrogations, does not currently address some aspects of undercover tactics in custodial settings during interrogation. AB 1905, a bill that would help fill some gaps in addressing this problem, provides clear rules that would help ensure that statements admitted in court are both credible and lawfully obtained, ultimately supporting the integrity of the justice system, as well as reducing costly litigation over admissibility.

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<sup>5</sup> See also *Padilla, supra*, 13 Cal.5th at 161 (holding that “non-final” includes any case remanded following a habeas petition.)

<sup>6</sup> The committee surveyed prosecutors and public defenders from multiple counties, and all reported never seeing this in a criminal case – meaning an instance where a court reduced a felony to a misdemeanor at a time not explicitly outlined in the statute. Therefore, it seems unlikely this will arise as a retroactivity issue.

“In the 2026 case *People v. Zapata*, law enforcement utilized undercover agents in an operation to elicit incriminating statements from a suspect in a holding cell. The suspect had been falsely told that a witness identified him, and that he would be charged with murder; the suspect then confessed to the alleged crime. The California Court of Appeal ultimately reversed the conviction, ruling that the statements were inadmissible due to the encounter being deemed a custodial interrogation and lacking the presence of an attorney. *People v. Zapata* ruled in this way for an adult suspect, undermining confidence in the credibility of prosecutions based on coerced statements, especially those given by the more vulnerable young and non-adult population.

“AB 1905 would act to counter these coercive tactics from law enforcement; AB 1905 would prohibit law enforcement from seeking statements from individuals who were 17 years or younger at the time of the alleged offense while using undercover officers or agents during custody. The bill would also provide clear, statewide guidance that prevents constitutionally questionable interrogation practices before they occur and would direct courts to consider violations when determining admissibility. Additionally, AB 1905 would require courts to weigh willful violations when assessing an officer’s credibility. Ultimately, the bill promotes reliable evidence, fair proceedings, and public trust in the justice system.”

- 7) **Argument in Opposition:** According to the *California State Sheriff’s Association*: “The materials offered in support of this bill reference “young people” and the assertion that they are “uniquely vulnerable during custodial interactions with law enforcement.” The problem is that AB 1905’s reach is not limited to young people. Rather, it applies to any person who was under 18 years of age at the time of the crime. This means that not only does this bill apply to an interrogation of a person who just turned 18 years old and who, only a few days prior, had been 17 years old at the time of the crime, but also, for example, an interrogation of a 40-year-old person relative to a 23-year-old crime. In either case, the bill attempts to limit law enforcement from seeking valuable evidence from adults in custody based on the notion that “young people” deserve a higher level of protection when it comes to interrogations.

“Further, the recent appellate case cited in the bill’s fact sheet (*People v. Zapata*) reads more as a *Miranda* case than a *Perkins* case without any indication that the defendant was a juvenile at the time of the commission of the crime or resulting interrogation. While *Zapata* involved a defendant being the subject of a *Perkins* operation (where law enforcement officers or inmates seek to obtain information while acting as inmates), the main issue noted by the court is that *Zapata*’s admission of guilt was obtained after he had invoked his *Miranda* rights. The problem is this bill uses *Zapata* as justification for its passage despite the fact that *Zapata* does not appear to have been a juvenile at the time of interrogation and that further regulation of *Perkins* operations is not necessarily the main motivator of the court’s ruling.

“Additionally, as it relates to actual juveniles, the Legislature enacted AB 2644 in 2022, which prohibits a law enforcement officer from employing threats, physical harm, deception, or psychologically manipulative interrogation tactics during a custodial interrogation of a person 17 years of age or younger. These protections already exist and further limitations on *Perkins* operations do not seem justified.

- 8) **Prior Legislation:**

- a) SB 395 (Lara), Chapter 681, Statutes of 2018, requires that a youth 15 years of age or younger consult with counsel prior to a custodial interrogation and before waiving their constitutional right against self-incrimination and right to counsel.
- b) SB 203 (Bradford), Chapter 335, Statutes of 2020, requires that prior to any custodial interrogation and before a waiver of any Miranda rights, a youth of 17 years or younger must consult with legal counsel in person, by telephone, or by video conference.
- c) SB 1052 (Lara), of the 2015-2016 Legislative Session, was similar to this bill in that it would have required that a youth under the age of 18 consult with counsel prior to a custodial interrogation and before waiving a right against self-incrimination and right to counsel. SB 1052 was vetoed by Governor Brown.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

ACLU California Action  
Alliance for Children's Rights  
California Attorneys for Criminal Justice  
California Innocence Coalition  
California Public Defenders Association  
California Youth Defender Center  
Californians for Safety and Justice (CSJ)  
Communities United for Restorative Youth Justice (CURYJ)  
Courage California  
Ella Baker Center for Human Rights  
Friends Committee on Legislation of California  
Initiate Justice  
Justice2jobs Coalition  
LA Defensa  
Local 148 Los Angeles County Public Defender's Union  
San Francisco Public Defender  
Silicon Valley De-bug  
Sister Warriors Freedom Coalition  
Smart Justice California, a Project of Beyond Impact

### **Opposition**

California State Sheriffs' Association

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