
THIRD READING

Bill No: AB 1905
Author: Schultz (D), et al.
Amended: 8/3/26 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-1, 6/30/26

AYES: Arreguín, Caballero, Cortese, Pérez, Wiener

NOES: Seyarto

ASSEMBLY FLOOR: 49-16, 5/27/26 - See last page for vote

SUBJECT: Juveniles: custodial interrogation

SOURCE: California Innocence Coalition
California Public Defenders Association

DIGEST: This bill 1) prohibits a law enforcement officer from seeking to obtain information or statements from a person who was 17 or younger at the time the crime was committed and under 26 at the time of custody, and the information or statements are sought by undercover officers or informants; and 2) requires the court to consider a violation of this prohibition in adjudicating the admissibility of statements obtained and determining the credibility of an officer.

Senate Floor Amendments of 8/3/26 specify that the prohibition on undercover law enforcement officers or informants seeking statements or information from a person in custody who is under 26 and who was under 18 at the time of the crime does not apply when the officer or informant reasonably believed the information sought was necessary to protect against an imminent threat to life and the questions were limited to those reasonably necessary to obtain information about the imminent threat, as specified.

ANALYSIS:

Existing law:

- 1) Provides that persons may not be compelled in a criminal case to be a witness against themselves. (California Constitution [Cal. Const.], Article [art.] I, § 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. (Welfare and Institutions [Welf. & 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. & 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. & 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. & Inst. Code, § 625.6, subd. (d).)
- 6) 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 relating to the commission of a misdemeanor or felony. (Welf. & Inst. Code, § 625.7, subd. (a).)
- 7) Requires that a minor taken into a place of confinement be advised of the right to make at least two phone calls, one completed to a parent or guardian, or a

responsible relative, or employer and one to an attorney. (Welf. & Inst. Code, § 627, subd. (b).)

- 8) 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 Penal [Pen.] Code, § 859.5.)
- 9) Provides 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 advise the minor of their constitutional rights, including the right to remain silent and the right to counsel. (Welf. & Inst. Code, § 627.5.)

This bill:

- 1) Prohibits a law enforcement officer from seeking to obtain 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 and under 26 years of age at the time of custody.
 - 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 agents of, law enforcement.
- 2) Requires the court to consider, in adjudicating the admissibility of statements obtained in violation of the above prohibition, the effect of failure to comply with that prohibition and, additionally, to consider any willful violation in determining the credibility of a law enforcement officer.
- 3) Provides that its provisions only apply to a statement obtained on or after January 1, 2027.

Background

“*Miranda* warnings” are a series of admonitions that are typically given by police before interrogating a suspect of a crime. The purpose of *Miranda* warnings is to advise people who have been arrested of their constitutional right against self-incrimination. They are the product of the landmark Supreme Court decision *Miranda v. Arizona* (1966) 384 U.S. 436. In deciding that case, the Supreme Court imposed specific, constitutional requirements for the advice an officer must provide prior to engaging in custodial interrogation and held that statements taken

without these warnings are inadmissible against the defendant in a criminal case. Specifically, the Court held that prior to any questioning, the suspect must be warned that he has a right to remain silent, that any statement made may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. (*Id.* at p. 444.)

In order for *Miranda* warnings to apply, an individual must be subjected to “custodial interrogation.” A suspect is “in custody” if a reasonable person in a similar situation would not feel free to end the interrogation and leave. (*Miranda, supra*, 384 U.S. at p. 444.) Custody does not require a person to be at the police station, or in handcuffs, or in the back of a police car, but rather that the police have deprived the suspect of his or her freedom of action in some significant way. (*Ibid.*) An “interrogation” is “any words or actions on the part of officers (other than those normally attendant to arrest and custody) that the officer should know are reasonably likely to elicit an incriminating response from the suspect.” (*Rhode Island v. Innis* (1980) 446 U.S. 291, 301.) Such questioning can be in the form of an officer asking the suspect direct questions, or it can be indirect in the form of comments or actions by the officer that the officer should know are likely to produce an incriminating reply. (*Ibid.*)

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 inmate. (*Perkins*, 496 U.S. at p. 299.) In *Perkins*, two undercover agents posing as inmates 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, 814.) 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*, 118 Cal. App. 5th 529.) 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*, 118 Cal.App. 5th at pp. 541-542.) 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 young people who may feel compelled to "brag" or make incriminating statements even when they did not commit the crime simply to impress the listener.

Specific Concerns Interrogating Youth. A growing body of research indicates that adolescents are less capable of understanding their constitutional rights than their adult counterparts, and also that they are more prone to falsely confessing to a crime they did not commit. (See Luna, *Juvenile False Confessions: Juvenile Psychology, Police Interrogation Tactics, And Prosecutorial Discretion* (2018) 18 Nev. L.J. 291, <<https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1733&context=nlj> .) The research suggests that "[b]ecause adolescents are more impulsive, are easily influenced by others (especially by figures of authority), are more sensitive to rewards (especially immediate rewards), and are less able to weigh in on the long-term consequences of their actions, they become more receptive to coercion." (*Id.* at p. 297, citing various scientific journals.) The context of custodial interrogation is believed to exacerbate these risks. In fact, prior research has shown that 35 percent of proven false confessions were obtained from suspects under the age of 18. (Drizin & Leo, *The Problem of False Confessions in*

the Post-DNA World (2004) 82 N. C. L. Rev. 891, pp. 906-907, available at <<https://scholarship.law.unc.edu/nclr/vol82/iss3/3/> .)

In recognition of the susceptibility of youth to making false confessions, the Legislature enacted SB 395 (Lara, Chapter 681, Statutes of 2017), which required minors under the age of 16 to consult with an attorney prior to any custodial interrogation by a police officer. SB 203 (Bradford, Chapter 335, Statutes of 2020), expanded the protections from custodial interrogation to 16 and 17 year olds. Most recently, AB 2644 (Holden, Chapter 289, Statutes of 2022), prohibited law enforcement officers from employing threats, physical harm, deception, or psychologically manipulative interrogation tactics during a custodial interrogation of a person under 18. As originally introduced, AB 2644 applied to individuals up to 25 years old.

The proponents of this bill assert that individuals in custody who are up to 26 should also receive some protections from interrogation or other law enforcement tactics to gather information while in custody because research has found that cognitive development continues into the mid-20s. It is well-documented that the prefrontal cortex—the part of the brain responsible for executive functions such as focus, long-term planning, and impulse control—matures last, until after age 25. (See Ellen Barlow, *Under the Hood of the Adolescent Brain* (Oct. 17, 2014), available at <<https://hms.harvard.edu/news/under-hood-adolescent-brain> ; Johnson, et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, *Journal of Adolescent Health* (Sept. 2009), available at <<https://pmc.ncbi.nlm.nih.gov/articles/PMC2892678/> .) In large part due to the research on brain development, Youth Offender Parole eligibility was expanded in 2017 to include individuals who committed their crime prior to age 26. (AB 1308, Stone, Chapter 675, Statutes of 2017.) In the context of juvenile justice, young adults up to age 25 are considered “transitional age youth.” (See Pen. Code, § 1000.7, which established a deferred entry of judgment pilot program allowing certain defendants who committed their crime between 18-24 to be housed in a juvenile facility and receive supportive services in lieu of serving time in a county jail.)

This bill prohibits a law enforcement officer from seeking to obtain information or statements from a person when both of the following apply:

- The person was 17 years of age or younger at the time the crime was committed and under 26 years of age at the time of custody.

- 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 agents of, law enforcement.

This bill additionally requires the court to consider, in adjudicating the admissibility of statements obtained in violation of the prohibition, the effect of failure to comply with that prohibition and, additionally, to consider any willful violation in determining the credibility of a law enforcement officer. The provisions only apply to a statement obtained on or after January 1, 2027.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/3/26)

California Innocence Coalition (co-source)
 California Public Defenders Association (co-source)
 ACLU California Action
 California Attorneys for Criminal Justice
 Ella Baker Center for Human Rights
 Felony Murder Elimination Project
 Initiate Justice
 Justice2Jobs Coalition
 La Defensa
 Local 148 Los Angeles County Public Defender's Union
 San Quentin Skunkworks
 Smart Justice California

OPPOSITION: (Verified 8/3/26)

California State Sheriffs' Association
 Los Angeles County District Attorney's Office
 Los Angeles County Professional Peace Officers Association
 Peace Officers Research Association of California
 Riverside County Sheriff's Office
 San Bernardino County Sheriff's Department
 San Diego County Sheriff's Office

ASSEMBLY FLOOR: 49-16, 5/27/26

AYES: Addis, Aguiar-Curry, Ahrens, Arambula, Ávila Farías, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen,

Ortega, Papan, Pellerin, Quirk-Silva, Ramos, Ransom, Rogers, Schultz, Sharp-
Collins, Solache, Stefani, Valencia, Ward, Wicks, Wilson, Zbur, Rivas
NOES: Alanis, Bains, Castillo, Chen, Davies, DeMaio, Dixon, Ellis, Gallagher,
Jeff Gonzalez, Hadwick, Johnson, Macedo, Patterson, Sanchez, Tangipa
NO VOTE RECORDED: Alvarez, Flora, Gipson, Hoover, Lackey, Pacheco,
Patel, Petrie-Norris, Celeste Rodriguez, Michelle Rodriguez, Blanca Rubio,
Schiavo, Soria, Ta, Wallis

Prepared by: Stephanie Jordan / PUB. S. /
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