

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: William Scott, Police Chief, Police Department  
George Gascon, District Attorney  
Jeff Adachi, Public Defender  
Allen Nance, Chief Probation Officer  
Vicky Hennessy, Sheriff, Sheriff's Department

FROM: Victor Young, Assistant Clerk  
Rules Committee

DATE: December 27, 2018

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Rules Committee has amended the following proposed legislation:

**File No. 181217**

**Ordinance amending the Administrative Code to prohibit police officers from questioning persons 17 years of age or younger, in custody, unless certain conditions are met, providing for legal representation of the youth in connection with the interrogation, and mandating parental access to youth while police officers question youth.**

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [victor.young@sfgov.org](mailto:victor.young@sfgov.org).

c: Rowena Carr, Police Department  
Asja Steeves, Police Department  
Cristine Soto DeBerry, Office of the District Attorney  
Maxwell Szabo, Office of the District Attorney  
Sheryl Cowan, Juvenile Probation Department  
Theodore Toet, Sheriff's Department  
Katherine Gorwood, Sheriff's Department  
Nancy Crowley, Sheriff's Department

1 [Administrative Code - Police Officers Questioning Youth]

2  
3 **Ordinance amending the Administrative Code to prohibit police officers from**  
4 **questioning persons 17 years of age or younger, in custody, unless certain conditions**  
5 **are met, providing for legal representation of the youth in connection with the**  
6 **interrogation, and mandating parental access to youth while police officers question**  
7 **youth.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
11 **Board amendment additions** are in double-underlined Arial font.  
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
13 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. Background and Findings

17 (a) Beginning January 1, 2018, state law has mandated that youths 15 years of age or  
18 younger consult with legal counsel prior to a custodial interrogation or a waiver of Miranda  
19 rights. Cal. Welf. & Inst. Code Section 625.6. The state law mandate does not cover youths  
20 aged 16 and 17. But there are compelling reasons to extend the same type of mandate within  
21 the City to youths who are 16 or 17.

22 (b) Developmental and neurological sciences suggest that the brain's cognitive  
23 function continues to develop through young adulthood.

24 (c) Youths aged 16 and 17 generally have not yet formed the mental capacity, on their  
25 own, to understand Miranda rights. Youths aged 16 and 17 also often lack the experience  
and maturity to understand Miranda rights. The Flesch-Kincaid readability test, which is one

1 of the most widely used tools for assessing readability of written materials, indicates that to  
2 understand Miranda rights, a person must have at least a twelfth-grade reading  
3 comprehension level. Most 16- and 17-year-olds are in the tenth and eleventh grade, and  
4 many lack a twelfth-grade reading comprehension level.

5 (d) An extensive body of literature demonstrates that juveniles are more suggestible  
6 than adults, may easily be influenced by questioning from authority figures, and may provide  
7 inaccurate reports when questioned in a leading, repeated, and suggestive fashion. (In *J.D.B.*  
8 *v. North Carolina*, 131 U.S. 2394 (2012)). Recent research has shown that more than one-  
9 third (35%) of proven false confessions were obtained from suspects under the age of 18.  
10 (Drizen & Leo, *The Problem of False Confession in the Post – DNA World* (2004) 82 N.C.L.  
11 Rev. 891, 902, 944-945. fn 5. The leading study of 125 proven false confession cases, cited  
12 by the Supreme Court in *Corley v. U.S.*, 129 U.S. 1558 (2009) and *J.D.B. v. North Carolina*  
13 131 U.S. 2394 (2012), found that 63% of false confessors were under the age of 25 and 32%  
14 were under 18. In another respected study of 340 exonerations that have taken place since  
15 1989 (Samuel R. Gross et al., *Exoneration in the United States 1989 Through 2003*, 95.  
16 *J.Crim. L. &Criminology* 523-53 (2005)), researchers found that juveniles under the age of 18  
17 were three times as likely to falsely confess as adults; a full 42% of juvenile exonerees had  
18 falsely confessed, compared to only 13% of wrongfully convicted adults. In another study, an  
19 examination of 103 wrongful convictions of factually innocent teenagers and children found  
20 that a false confession contributed to 31.1% of the juvenile cases studied, as compared  
21 against only 17.8% of adult wrongful convictions. (Joshua A. Tepfer, Laura H. Nirider, &  
22 Lynda Tricarico, *Arresting Development: Convictions of Innocent Youth*, 64 *Rutgers L. Rev.*  
23 887, 904 (2010).

24 (e) State law requires police officers to notify a minor's parent, guardian, or a  
25 responsible relative when the minor is taken into custody, and also gives the minor the right to

1 make two phone calls. Cal. Welf. & Inst. Code Section 625.6 9(a)(b). State law does not  
2 require that parents be permitted to be with their minor child, while the child is in police  
3 custody.

4  
5 Section 2. The Administrative Code is hereby amended by adding Chapter 96C,  
6 consisting of Sections 96C.1, 96C.2, 96C.3, and 96C.4, to read as follows:

7  
8 **CHAPTER 96C: POLICE INTERROGATION OF YOUTH**

9  
10 **SEC. 96C.1. RESTRICTIONS ON INTERROGATION.**

11 (a) The Police Department ("SFPD") may not subject a person 17 years of age or younger  
12 ("Youth") to a custodial interrogation or question or engage in unnecessary conversation with Youth  
13 who are not free to leave, unless and until the following two conditions have been met:

14 (1) The Youth consults with legal counsel in person, by telephone, or by video  
15 conference, which consultation must occur before the waiver of any Miranda rights. This consultation  
16 with legal counsel may not be waived.

17 (2) Following the legal consultation, SFPD shall allow immediate access to the Youth by  
18 the parent, guardian, or a responsible relative (collectively, "parent") to be present either in person,  
19 by telephone, or by video conference during the custodial interrogation and when SFPD questions or  
20 engages in unnecessary conversation with the Youth who is not free to leave. But while this subsection  
21 (a)(2) allows parental attendance while SFPD subjects the Youth to a custodial interrogation or when  
22 SFPD questions or engages in unnecessary conversation with the Youth who is not free to leave, this  
23 subsection (a)(2) also recognizes that the parent may not violate California Penal Code Section 148,  
24 which forbids willfully delaying or obstructing a police investigation.

1                   (3) For purposes of this subsection (a), "unnecessary conversation" means  
2 communications with the Youth that are not designed to address the Youth's physical needs or to give  
3 the Youth directions relating to operation of the facility where the Youth is detained.

4                   (b) The restrictions imposed by subsection (a) do not apply to a custodial interrogation or when  
5 SFPD questions a Youth who is not free to leave, when:

6                   (1) An SFPD officer questions a Youth after reasonably concluding that the information  
7 the officer is seeking is necessary to protect life or property from an imminent threat; and

8                   (2) The SFPD officer limits the questions to those reasonably necessary to obtain that  
9 information. Other questions to the Youth, if any, are subject to the restrictions imposed by subsection  
10 (a).

11                   **SEC. 96C.2. PROVISION OF COUNSEL.**

12                   The Public Defender's Office shall provide counsel for the Youth during the consultation and  
13 custodial interrogation referenced in subsection (a) of Section 96C.1. The Youth may instead retain  
14 private counsel, but not at the expense of the City.

15                   **SEC. 96C.3. UNDERTAKING FOR THE GENERAL WELFARE.**

16                   In enacting and implementing this Chapter 96C, the City is assuming an undertaking only to  
17 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an  
18 obligation for breach of which it is liable in money damages to any person who claims that such breach  
19 proximately caused injury.

20                   **SEC. 96C.4. SEVERABILITY.**

21                   If any section, subsection, sentence, clause, phrase, or word of this Chapter 96C, or any  
22 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a  
23 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining  
24 portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have  
25 passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not

1 declared invalid or unconstitutional without regard to whether any other portion of this Chapter or  
2 application thereof would be subsequently declared invalid or unconstitutional.

3  
4 Section 3. Effective Date. This ordinance shall become effective 30 days after  
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
7 of Supervisors overrides the Mayor's veto of the ordinance.

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10 APPROVED AS TO FORM:  
11 DENNIS J. HERRERA, City Attorney

12 By:

  
13 BURK E. DELVENTHAL  
Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Administrative Code - Police Officers Questioning Youth]

**Ordinance amending the Administrative Code to prohibit police officers from questioning persons 17 years of age or younger, in custody, unless certain conditions are met, providing for legal representation of the youth in connection with the interrogation, and mandating parental access to youth while police officers question youth.**

Existing Law

There is no City law requiring persons 17 years of age or younger to consult with a lawyer prior to a custodial interrogation or waiver of Miranda rights. State law requires persons 15 years of age or younger to consult with a lawyer prior to a custodial interrogation or a waiver of Miranda rights.

There is no City or state law that provides the parent, guardian, or a responsible relative (collectively "parent") the right to immediately access the Youth while in police custody or to be present during a custodial interrogation.

Amendments to Current Law

This ordinance expands on state law by increasing the age of persons, to 17 and younger, with a nonwaivable right to consult with a lawyer prior to a custodial interrogation or waiver of Miranda rights. This ordinance also gives the parent the right to be present during the custodial interrogation or when police officers engage in unnecessary conversation with or question a youth who is not free to leave. These restrictions would not apply when the information the SFPD officer seeks is reasonably necessary to protect life or property from an imminent threat and questions asked of the youth are reasonably necessary to obtain that information.

Background Information

This ordinance arose from an incident where SFPD officers questioned students during the investigation of a firearm discharge at Balboa High School. During the Board of Supervisors hearing on SFPD's response to that incident, parents stated that SFPD detained students at gunpoint, and that parents were not allowed to see their children for over an hour, or to be present during SFPD's questioning of the students.

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2018 DEC 11 PM 4:28

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

BY \_\_\_\_\_

- 1. For reference to Committee.  
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative**

**Sponsor(s):**

Ronen

**Subject:**

Ordinance amending the Administrative Code to prohibit police officers from questioning persons 17 years of age or younger, in custody, unless certain conditions are met, providing for legal representation of the youth in connection with the interrogation, and mandating parental access to youth while police officers' question youth.

**The text is listed below or attached:**

Please see the attached ordinance.



Signature of Sponsoring Supervisor:

*Willy Rone*

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For Clerk's Use Only: