

BOARD of SUPERVISORS



City Hall
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Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Kiely Hosmon, Director
Youth Commission

FROM: Angela Calvillo, Clerk of the Board

DATE: December 21, 2018

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

The Board of Supervisors has received the following proposed legislation which is being referred to the Youth Commission as per Charter, Section 4.124 for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

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.

Please return this cover sheet with the Commission's response to **Victor Young, Assistant Clerk, Rules Committee.**

RESPONSE FROM YOUTH COMMISSION Date: _____

___ No Comment

___ Recommendation Attached

Chairperson, Youth Commission

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.

8
9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By:


13 BURK E. DELVENTHAL
14 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

For Clerk's Use Only: