

1 [Administrative Code - Police Officers Questioning Youth]

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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 that responsible adults be given access to youth**  
7 **while police officers question 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.

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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:

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

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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 with legal counsel, SFPD shall allow the parent,  
18 relative who is related to the youth by blood, adoption, or affinity within the fifth degree of  
19 kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the  
20 words “great,” “great-great,” or “grand,” or the spouse of any of these persons even if the  
21 marriage was terminated by death or dissolution or an adult caregiver who has an established  
22 familial relationship with a relative of the youth or a familial or mentoring relationship with the  
23 youth, the youth’s teacher, medical professional, clergy, neighbor, social worker, mental  
24 health clinician, or child advocate from a non-profit or community organization whose primary  
25 focus is assisting youth (collectively, “Responsible Adult”) who is not a person of interest or a

1 suspect in the incident or subject matter giving rise to the custodial interrogation or  
2 questioning of the Youth. If the Youth does not object to the identified Responsible Adult's  
3 presence, the Responsible Adult may be present either in person, by telephone or video  
4 conference during the custodial interrogation and when SFPD questions or engages in  
5 unnecessary conversation with the Youth who is not free to leave. ~~immediate access to the~~  
6 ~~Youth by the parent, guardian, or a responsible relative (collectively, "parent") to be present~~  
7 ~~either in person, by telephone, or by video conference during the custodial interrogation and~~  
8 ~~when SFPD questions or engages in unnecessary conversation with the Youth who is not free~~  
9 ~~to leave.~~ But while this subsection (a)(2) allows parental attendance by the Responsible Adult  
10 while SFPD subjects the Youth to a custodial interrogation or when SFPD questions or engages in  
11 unnecessary unnecessary conversation with the Youth who is not free to leave, this subsection (a)(2)  
12 also recognizes that the parent Responsible Adult may not violate California Penal Code Section  
13 148, which forbids willfully delaying or obstructing a police investigation.

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

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

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

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

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

2           *The Public Defender’s Office shall provide ~~counsel~~ legal advice limited in scope for the*  
3 *Youth during the consultation and custodial interrogation referenced in subsection (a) of Section*  
4 *96C.1. The Youth may instead retain private counsel, but not at the expense of the City, absent*  
5 *appointment by the court.*

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

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

11           **SEC. 96C.4. SEVERABILITY.**

12           *If any section, subsection, sentence, clause, phrase, or word of this Chapter 96C, or any*  
13 *application thereof to any person or circumstance, is held to be invalid or unconstitutional by a*  
14 *decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining*  
15 *portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have*  
16 *passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not*  
17 *declared invalid or unconstitutional without regard to whether any other portion of this Chapter or*  
18 *application thereof would be subsequently declared invalid or unconstitutional.*

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20           Section 3. Effective Date. This ordinance shall become effective 30 days after  
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

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1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisors overrides the Mayor's veto of the ordinance.

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4 APPROVED AS TO FORM:  
5 DENNIS J. HERRERA, City Attorney

6 By: \_\_\_\_\_  
7 BURK E. DELVENTHAL  
8 Deputy City Attorney

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